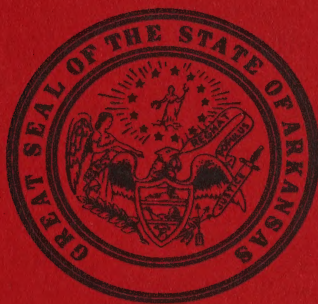


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ARKANSAS CODE REVISION COMMISSION

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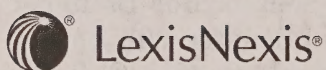
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TITLE 23

PUBLIC UTILITIES AND REGULATED INDUSTRIES

(CHAPTERS 1-29 IN VOLUME 22; CHAPTERS 30-59 IN VOLUME 23A; CHAPTERS 60-73 IN VOLUME 23B; CHAPTERS 74-87 IN VOLUME 24A)

SUBTITLE 3. INSURANCE

CHAPTER.

- 88. PROPERTY INSURANCE.
- 89. CASUALTY INSURANCE.
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SUBTITLE 3. INSURANCE

CHAPTER 88

PROPERTY INSURANCE

SUBCHAPTER.

- 1. GENERAL PROVISIONS.

SUBCHAPTER

3. RURAL RISK UNDERWRITING.

4. FIRE LOSS REPORTING ACT OF 2003.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

23-88-101. Valued policy law.

23-88-105. Notice required prior to expiration of property insurance policy — Definition.

23-88-106. Expense depreciation appli-

cable when determining value of damaged property in insurance policies — Definitions.

23-88-101. Valued policy law.

(a)(1) Except as provided in subsection (b) of this section, in case of a total loss by fire or natural disaster of the property insured, a property insurance policy other than for flood and earthquake insurance shall be held and considered to be a liquidated demand against the company taking the risk for the full amount stated in the property insurance policy or the full amount upon which the company charges, collects, or receives a premium.

(2) For property covered under a commercial insurance policy, the amount paid under subdivision (a)(1) of this section shall be reduced by the amount of retention or deductible provided by the commercial insurance policy.

(b) This section does not apply:

(1) If a total loss by fire or a natural disaster other than a flood or an earthquake:

(A) Is caused by the insured or someone acting on behalf of or in collusion with the insured, through:

- (i) A criminal act;
- (ii) Intentional misrepresentation;
- (iii) Fraud; or
- (iv) Deceit; or

(B)(i) Is covered by two (2) or more property insurance policies that insure the same property.

(ii) If two (2) or more property insurance policies insure the same property:

(a) The insured shall recover the lesser of:

(1) The face amount of the property insurance policy with the highest limit of coverage; or

(2) The insured's interest in the property; and

(b) Each insurer shall pay the proportionate share that its property insurance policy bears to the amount the insured is entitled to recover under subdivision (b)(1)(B)(ii)(a) of this section;

(2) If the completed value of a building, structure, mobile home, or manufactured building is insured under a builder's risk insurance policy;

(3)(A) If the claim is for the total loss of a building that is insured under a blanket insurance policy for a stated amount that covers two (2) or more buildings or that covers buildings and personal property.

(B) Settlement of a claim for the total loss to a building that is insured by a blanket insurance policy for a stated amount that covers two (2) or more buildings or that covers buildings and personal property shall be based on an initial payment of the value assigned for the purpose of rating the policy to each affected building before the loss, with any balance remaining being settled according to the terms and conditions of the blanket insurance policy; or

(4) To personal property or detached or appurtenant structures.

History. Acts 1959, No. 148, § 446; A.S.A. 1947, § 66-3901; Acts 1999, No. 1069, § 1; 2015, No. 1210, § 5; 2017, No. 683, § 1.

Amendments. The 2015 amendment redesignated former (a) as (a)(1); in (a)(1),

added “Except as provided in subsection (b) of this section” and inserted “property insurance” following “stated in the”; added (a)(2); and rewrote (b).

The 2017 amendment rewrote (b).

23-88-105. Notice required prior to expiration of property insurance policy — Definition.

(a) Except for nonpayment of premium, the insurer shall give either a written notice of nonrenewal or an offer of renewal at least thirty (30) days prior to the expiration of the policy’s existing term.

(b) The insurer shall send the insured a written notice and the insurance producer written or electronic notice of the offer of renewal under subsection (a) of this section, indicating the new premium and providing a description of any change in deductible or policy provision in the renewal policy.

(c) As used in this section, “renewal” means the issuance or delivery by an insurer of a policy superseding a policy previously issued by the insurer at the end of the previously issued policy period if the policy is delivered by:

(1) The same insurer; or

(2) An affiliate or subsidiary, as those terms are defined in § 23-63-503, that has a financial strength rating that is:

(A) Issued by an industry-recognized independent insurance rating company; and

(B) At least as good as the insurer issuing the superseded policy.

History. Acts 2003, No. 1790, § 2; 2019, No. 689, § 4.

Amendments. The 2019 amendment added (c).

CASE NOTES**ANALYSIS**

Sufficient Notice.
Type of Insurance.

Sufficient Notice.

In the insured's action to obtain additional insurance benefits for smoke and fire damage at his home, the district court correctly interpreted his insurance policy as an actual cash-value policy, rather than a replacement-cost policy, because the annual policies included actual-cash-value endorsements and the policy renewal documents satisfied the requirements of this section. Before renewal, the insured received two notice of renewal letters and was afforded 13 months to review the

materials including declaration pages referencing the endorsement that had been attached to his policy. *Hatcher v. MDOW Ins. Co.*, 903 F.3d 724 (8th Cir. 2018).

Type of Insurance.

In insured's suit against an insurer for breach of contract and negligence based on the insurer's failure to give notice of policy expiration and to pay on a grain-loss claim, genuine issues of material fact remained whether the insurance policy at issue could be both casualty insurance and property insurance, such that this section applied. Thus, summary judgment in favor of the insurer was not appropriate. *McClendon v. Farm Bureau Mut. Ins. Co.*, 2019 Ark. App. 216 (2019).

23-88-106. Expense depreciation applicable when determining value of damaged property in insurance policies — Definitions.

(a) As used in this section:

(1) "Damaged property" means a damaged dwelling, a damaged structure, damaged personal property, or any other damaged property or service, the damage to which is covered under the terms of an insurance policy; and

(2) "Expense depreciation" means depreciation, including but not limited to the cost of goods, materials, labor, and services necessary to replace, repair, or rebuild damaged property.

(b) An insurance policy covering damaged property:

(1) May allow for expense depreciation; and

(2) Shall provide notice within the insurance policy in a form approved by the Insurance Commissioner that expense depreciation may be deducted.

(c) If expense depreciation is applied to a loss for damaged property, the insurer shall provide a written explanation as to how the expense depreciation was calculated.

History. Acts 2017, No. 279, § 1.

SUBCHAPTER 3 — RURAL RISK UNDERWRITING

SECTION.

23-88-308. Commissioner's powers and duties.

23-88-308. Commissioner's powers and duties.

(a) In addition to approving the plan of operation, the Insurance Commissioner shall have the authority to promulgate rules necessary to effect the purpose of this subchapter.

(b) Further, after review of annual statements, other reports, and any other statistics which the commissioner deems necessary, the commissioner shall certify to the plan the aggregate net direct property insurance premiums written on property in this state by all members. This information will be used to determine a member's participation.

History. Acts 1985 (1st Ex. Sess.), No. 25, § 8; A.S.A. 1947, § 66-6108; Acts 2019, No. 315, § 2760.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (a).

SUBCHAPTER 4 — FIRE LOSS REPORTING ACT OF 2003

SECTION.

23-88-402, 23-88-403. [Repealed.]

23-88-405. Rules.

23-88-402, 23-88-403. [Repealed.]

Publisher's Notes. These sections, concerning annual information of fire-related losses and proprietary information, were repealed by Acts 2015, No. 1210,

§§ 6, 7. The sections were derived from the following sources:

23-88-402. Acts 2003, No. 1345, § 2.

23-88-403. Acts 2003, No. 1345, § 3.

23-88-405. Rules.

The Insurance Commissioner may adopt reasonable rules to enforce the provisions of this subchapter.

History. Acts 2003, No. 1345, § 5; 2019, No. 315, § 2761.

deleted "and regulations" following "rules" in the section heading and the text.

Amendments. The 2019 amendment

CHAPTER 89

CASUALTY INSURANCE

SUBCHAPTER.

2. AUTOMOBILE LIABILITY INSURANCE GENERALLY.

3. AUTOMOBILE LIABILITY INSURANCE — CANCELLATION AND NONRENEWAL.

5. AMUSEMENT RIDE AND AMUSEMENT ATTRACTION SAFETY INSURANCE ACT.

RESEARCH REFERENCES

ALR. Construction and Application of Provision of Liability Insurance Policy Expressly Excluding Injuries Intended or

Expected by Insured — Acts Taken in Self-Defense, 20 A.L.R.7th Art. 2 (2018).

SUBCHAPTER 2 — AUTOMOBILE LIABILITY INSURANCE GENERALLY

SECTION.

23-89-212. Motor vehicle liability insurance — Extraterritorial provision.

23-89-202. Required first party coverage.**RESEARCH REFERENCES**

ALR. Comment Note: Amount in Controversy Jurisdictional Requirement under Class Action Fairness Act (CAFA). 5 A.L.R. Fed. 3d Art. 2 (2016).

23-89-204. Coverage for passengers and persons struck by insured vehicle.**CASE NOTES**

Cited: Southern Farm Bureau Cas. Ins. Co. v. Shelter Mut. Ins. Co., 2016 Ark. App. 563, 506 S.W.3d 915 (2016).

23-89-208. Payments.**RESEARCH REFERENCES**

ALR. Comment Note: Amount in Controversy Jurisdictional Requirement under Class Action Fairness Act (CAFA). 5 A.L.R. Fed. 3d Art. 2 (2016).

23-89-209. Underinsured motorist coverage.**RESEARCH REFERENCES**

ALR. Comment Note: Amount in Controversy Jurisdictional Requirement under Class Action Fairness Act (CAFA). 5 A.L.R. Fed. 3d Art. 2 (2016).

23-89-212. Motor vehicle liability insurance — Extraterritorial provision.

(a)(1) Motor vehicle liability insurance applies to the amounts which the owner is legally obligated to pay as damages because of accidental bodily injury and accidental property damage arising out of the ownership or operation of a motor vehicle if the accident occurs in the United States, its possessions, or Canada.

(2) Motor vehicle liability insurance must afford limits of liability not less than those required under the financial responsibility laws of this state.

(b) If the accident occurs outside this state but in the United States, its possessions, or Canada and if the limits of liability of the financial responsibility or compulsory insurance laws of the applicable jurisdiction exceed the limits of liability of the financial responsibility laws of

this state, the motor vehicle liability insurance is deemed to comply with the limits of liability of the laws of the applicable jurisdiction.

(c) For purposes of this section, “motor vehicle” is defined as provided in § 27-14-104.

History. Acts 2001, No. 309, § 2; 2019, No. 391, § 11.

Amendments. The 2019 amendment

substituted “§ 27-14-104” for “§ 27-14-207” in (c).

23-89-215. Priority of primary motor vehicle liability insurance coverage.

CASE NOTES

Uninsured Motorist Coverage.

Circuit court erred in holding that uninsured motorist (UM) coverage existed under an injured driver’s insurance policy where the driver was operating a vehicle owned by a third party and the vehicle was covered by another policy; the policy covering the vehicle that the injured driver was operating provided the primary UM coverage. The driver’s claim was not covered under his own policy because he was injured in a non-owned vehicle that had primary coverage. Southern Farm Bureau Cas. Ins. Co. v. Shelter

Mut. Ins. Co., 2016 Ark. App. 563, 506 S.W.3d 915 (2016).

Primary automobile-insurance coverage follows the vehicle, not the person. By reading §§ 23-89-215 and 23-89-403(a)(1) together, it can be inferred that the Legislature intended that uninsured motorist (UM) coverage, like liability insurance, follows the automobile because § 23-89-403(a)(1) requires that UM coverage be offered on every liability policy. Southern Farm Bureau Cas. Ins. Co. v. Shelter Mut. Ins. Co., 2016 Ark. App. 563, 506 S.W.3d 915 (2016).

SUBCHAPTER 3 — AUTOMOBILE LIABILITY INSURANCE — CANCELLATION AND NONRENEWAL

SECTION.

23-89-301. Definitions.

23-89-301. Definitions.

As used in this subchapter:

(1) “Automobile collision coverage” includes all coverage of loss or damage to an automobile insured under the policy resulting from collision or upset;

(2) “Automobile liability coverage” includes only coverage of bodily injury and property damage liability, medical payments, and uninsured motorists coverage;

(3) “Automobile physical damage coverage” includes all coverage of loss or damage to an automobile insured under the policy except loss or damage resulting from collision or upset;

(4) “Nonpayment of premium” means failure of the named insured to discharge when due any of his or her obligations in connection with the payment of premiums on a policy, or any installment of the premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit;

(5) “Policy” means an automobile liability, automobile physical damage, or automobile collision policy, or any combination thereof, delivered or issued for delivery in this state; and

(6)(A) “Renewal” or “to renew” means the issuance and delivery by an insurer of a:

(i) Policy superseding a policy previously issued and delivered by:

(a) The same insurer; or

(b) An affiliate or subsidiary, as defined in § 23-63-503, that has a financial strength rating that is:

(1) Issued by an industry-recognized independent insurance rating company; and

(2) At least as good as the insurer issuing the superseded policy; or

(ii) Certificate or notice extending the term of a policy beyond its policy period or term.

(B) However, for the purposes of this subchapter:

(i) Any policy with a policy period or term of less than six (6) months shall be considered as if written for a policy period or term of six (6) months; and

(ii) Any policy written for a term longer than one (1) year or any policy with no fixed expiration date shall be considered as if written for successive policy periods or terms of one (1) year, and the policy may be terminated at the expiration of any annual period upon giving twenty (20) days’ notice of cancellation prior to the anniversary date. This cancellation shall not be subject to any other provisions of this subchapter.

(C) This section does not repeal or supersede any requirements of the Insurance Holding Company Regulatory Act, § 23-63-501 et seq., including without limitation the provisions of § 23-63-515 that are applicable to material transactions between an insurer and an insurer’s affiliates.

History. Acts 1969, No. 333, § 1; A.S.A. 1947, § 66-4007; Acts 2007, No. 826, § 1; 2019, No. 689, § 5. **Amendments.** The 2019 amendment rewrote (6)(A); and added (6)(C).

SUBCHAPTER 4 — UNINSURED MOTORIST COVERAGE

RESEARCH REFERENCES

ALR. Applicability of Uninsured or Underinsured Motorist Statutes to Self-Insurers, 32 A.L.R.7th Art. 3 (2018).

23-89-403. Bodily injury coverage required.

CASE NOTES

ANALYSIS

Policy Provisions.

—Exclusions.

Primary Coverage.

Policy Provisions.

Permissive driver of an insured vehicle, who lost control of the vehicle on a highway where the state department of transportation was performing road-construction work, presented sufficient evidence that the accident arose out of the operation, maintenance, or use of an uninsured motor vehicle to survive a motion for summary judgment. Furthermore, the insuring clause of the policy did not require a collision between plaintiff's vehicle and the state dump truck. *Cross v. State Farm Mut. Auto. Ins. Co.*, 2018 Ark. App. 98, 541 S.W.3d 495 (2018).

—Exclusions.

Insurer's government-owned-vehicle exclusion was void when the permissive driver of an insured vehicle lost control of her vehicle on a highway where the state department of transportation was performing road-construction work because the exclusion was contrary to the public-policy purpose behind the Arkansas uninsured-motorist statute. *Cross v. State*

Farm Mut. Auto. Ins. Co., 2018 Ark. App. 98, 541 S.W.3d 495 (2018).

Primary Coverage.

Circuit court erred in holding that uninsured motorist (UM) coverage existed under an injured driver's insurance policy where the driver was operating a vehicle owned by a third party and the vehicle was covered by another policy; the policy covering the vehicle that the injured driver was operating provided the primary UM coverage. The driver's claim was not covered under his own policy because he was injured in a non-owned vehicle that had primary coverage. *Southern Farm Bureau Cas. Ins. Co. v. Shelter Mut. Ins. Co.*, 2016 Ark. App. 563, 506 S.W.3d 915 (2016).

Primary automobile-insurance coverage follows the vehicle, not the person. By reading §§ 23-89-215 and 23-89-403(a)(1) together, it can be inferred that the Legislature intended that uninsured motorist (UM) coverage, like liability insurance, follows the automobile because § 23-89-403(a)(1) requires that UM coverage be offered on every liability policy. *Southern Farm Bureau Cas. Ins. Co. v. Shelter Mut. Ins. Co.*, 2016 Ark. App. 563, 506 S.W.3d 915 (2016).

SUBCHAPTER 5 — AMUSEMENT RIDE AND AMUSEMENT ATTRACTION SAFETY INSURANCE ACT

SECTION.

23-89-502. Definitions.

23-89-504. Safety inspection and insurance required — Enforcement — Violations.

23-89-505. Safety inspections, notice, and insurance required.

23-89-506. Inspections and fees.

23-89-507. Inspection by insurance company — Change in coverage.

23-89-508. Rules.

SECTION.

23-89-509. Cease and desist orders — Notice required.

23-89-510. Accidents — Reporting injuries or death — Investigations.

23-89-515. Nondestructive testing.

23-89-516. Records.

23-89-517. Disposition of funds.

23-89-518. Amusement Ride Safety Advisory Board — Creation — Duties.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause

provided: "It is found and determined by the General Assembly of the State of Ar-

kansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Effi-

ciencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

23-89-502. Definitions.

As used in this subchapter:

(1)(A) "Amusement attraction" means any building or structure around, over, and through which persons may be moved by vehicle or mechanically driven device integral to the building or structure, and which provides amusement, pleasure, thrills, or excitement.

(B) "Amusement attraction" does not include theatres, museums, or enterprises principally devoted to the exhibition of products of agriculture, industry, education, science, religion, or the arts;

(2) "Amusement ride" means any mechanical device which carries or conveys passengers along, around, or over a fixed route or course or within a defined area for the purpose of giving the passengers amusement, pleasure, thrills, or excitement and includes the following:

(A) Bungee rides or bungee operations which utilize as a component a bungee cord, which is an elastic rope made of rubber, latex, or other elastic-type materials whether natural or synthetic;

(B) "Go-kart", which means a ride in which a vehicle is controlled or driven by patrons specifically designed for and run on a fixed course;

(C) Inflatable attractions such as "space walks", inflatable slides, or inflatable jousting or boxing rings;

(D) Any wave pool, water slide, or other similar attraction that totally or partially immerses a patron in water; and

(E) Artificial climbing walls;

(3) [Repealed.]

(4) [Repealed.]

(5) "Nondestructive testing" means the development and application of technical methods, including, but not limited to, radiographic, magnetic particle, ultrasonic, liquid penetrant, electromagnetic, neutron radiographic, acoustic emission, visual, and leak testing to examine materials or components in ways that do not impair their future usefulness and serviceability in order to:

(A) Detect, locate, measure, and evaluate discontinuities, defects, and other imperfections;

(B) Assess integrity, properties, and composition; and

(C) Measure geometrical characters; and

(6) "Owner" means any person who owns an amusement ride or attraction or in the event that the amusement ride or attraction is leased, the lessee.

History. Acts 1983, No. 837, § 2; A.S.A. 1947, § 66-5902; Acts 1995, No. 631, § 1; 2001, No. 1365, § 1; 2005, No. 924, § 1; 2019, No. 910, § 5505.

Amendments. The 2019 amendment repealed former (3) and (4).

23-89-504. Safety inspection and insurance required — Enforcement — Violations.

(a) It is unlawful for any person or entity to operate an amusement attraction or amusement ride unless the person or entity maintains liability insurance in the minimum amount required by this subchapter at all times during the operation of the amusement attraction or amusement ride in the state and unless the person has a current safety inspection report made at the time of set-up of the amusement attraction or amusement ride, but before use by the public.

(b)(1) The Director of the Division of Labor may conduct examinations and investigations into the affairs of any person or entity subject to the provisions of this subchapter for the purpose of determining compliance with the provisions of this subchapter.

(2) The Director of the Division of Labor shall administer and enforce the provisions of this subchapter.

(3) The Director of the Division of Labor shall promulgate rules for the proper administration and enforcement of this subchapter, including rules establishing minimum safety requirements for the operation and maintenance of amusement rides and amusement attractions.

(4) The Director of the Division of Labor shall employ amusement ride inspectors certified by the National Association of Amusement Ride Safety Officials.

(c) If the Director of the Division of Labor finds that an operator or owner has failed to comply with the provisions of this subchapter, he or she may order the operator or owner to immediately cease operating the amusement attraction or amusement ride and may impose upon the operator or owner an administrative penalty of not more than ten thousand dollars (\$10,000).

(d)(1) If the Director of the Division of Labor finds that an operator or owner failed to comply with the provisions of this subchapter, he or she shall so inform the prosecuting attorney in whose district any purported violation may have occurred.

(2)(A) Upon conviction, the operator or owner shall be guilty of a Class A misdemeanor.

(B) Upon conviction of a knowing violation, the operator or owner shall be guilty of a Class D felony.

(3) Each day of violation shall constitute a separate offense.

(e) The Director of the Division of Labor shall have authority to bring a civil action in any court of competent jurisdiction, without payment of

costs or giving bond for costs, to recover any administrative penalty imposed pursuant to this subchapter or to recover any delinquent fees owed pursuant to this subchapter.

(f) The Director of the Division of Labor and his or her deputies, assistants, examiners, and employees and the Director of the Division of Arkansas State Police and his or her deputies, officers, assistants, and employees and any public law enforcement officer shall not be liable for any damages occurring as a result of the implementation of this subchapter.

History. Acts 1983, No. 837, § 8; A.S.A. 1947, § 66-5908; Acts 1987, No. 839, § 4; 1995, No. 631, § 2; 2001, No. 1365, § 2; 2005, No. 1994, § 458; 2019, No. 315, § 2762; 2019, No. 910, § 5506.

by No. 315 substituted “rules” for “regulations” twice in (b)(3).

The 2019 amendment by No. 910 substituted “Division of Labor” for “Department of Labor” throughout the section.

Amendments. The 2019 amendment

23-89-505. Safety inspections, notice, and insurance required.

(a) Any person or entity desiring to operate any amusement attraction or amusement ride in this state, other than those specifically exempted in this subchapter, shall as a condition thereof obtain a safety inspection report issued by the owner or operator’s liability insurer or an inspector employed by the Division of Labor prior to commencing operation or opening to the public.

(b) Each person or entity desiring to operate any amusement attraction or amusement ride in this state, other than those specifically exempted in this subchapter, shall be covered by a policy of insurance issued by an insurance company authorized to do business in Arkansas or by a surplus lines insurer approved in Arkansas and insuring the owner or operator against liability for personal injury or property damage arising out of the use or operation of the amusement attraction or amusement ride, in the minimum amount of one million dollars (\$1,000,000) for each incident or occurrence.

(c)(1) Any person or entity intending to operate an amusement attraction or amusement ride in this state shall notify the Director of the Division of Labor of such intent and shall notify the director of the location, dates, and times of intended operation.

(2) The notice must be made to the director four (4) days prior to intended operation, excluding Saturdays, Sundays, or any legal holidays.

(d) Any person or entity failing to comply with subsection (c) of this section shall be subject to an administrative penalty issued by the director of no more than five thousand dollars (\$5,000) in addition to other penalties, both administrative and criminal, contained in this subchapter.

(e) The owner, manager, or operator shall:

(1) Promptly file proof of insurance with each fair board, sponsoring organization, lessor, landowner, or other person responsible for an amusement attraction or amusement ride being offered for use by the

public for each location in this state where each amusement attraction or amusement ride is in operation or is scheduled to be in operation; and

(2) Provide a copy of any safety inspection report to the fair board, sponsoring organization, lessor, landowner, or other person responsible for an amusement attraction or amusement ride being offered for use by the public, upon request or pursuant to contractual agreement.

History. Acts 1983, No. 837, § 3; A.S.A. 1947, § 66-5903; Acts 1987, No. 839, § 1; 1995, No. 631, § 3; 2001, No. 1365, § 3; 2019, No. 910, §§ 5507, 5508.

Amendments. The 2019 amendment substituted "Division of Labor" for "Department of Labor" in (a) and (c)(1).

23-89-506. Inspections and fees.

(a)(1) The Director of the Division of Labor is authorized to inspect each person or entity to ensure compliance with this subchapter.

(2) Two (2) times per calendar year, the director shall inspect all permanently placed operational amusement rides or amusement attractions located in this state being operated for profit or charity.

(3) All portable amusement rides or amusement attractions shall be inspected by the director every time they are moved to a new location in Arkansas and before they are permitted to commence operation or open to the public.

(4)(A) Inflatable attractions, self-contained mobile playgrounds, artificial climbing walls, and other patron-propelled amusement rides or amusement attractions shall be inspected annually, unless a more frequent schedule of inspections is established by rules of the director for certain types of inflatable attractions and self-contained mobile playgrounds.

(B) Self-contained mobile playgrounds, artificial climbing walls, and other patron-propelled amusement rides or amusement attractions shall be inspected pursuant to subdivision (a)(4)(A) of this section only if such playgrounds contain no mechanical or electrical parts, structures, or additions such as blowers or lights.

(C) The director may determine by rule which other portable amusement ride or amusement attraction is sufficiently safe to justify inspection only one (1) time each six (6) months.

(b) The director is authorized to make an inspection on an emergency basis when notification pursuant to this subchapter is made less than four (4) days, excluding Saturdays, Sundays, and legal holidays, prior to the date of the operation of the facility, if he or she determines that the owner or operator could not have reasonably known of the proposed operation prior to the four-day period and that the owner or operator meets all other requirements for operation in this state.

(c) If the director or an authorized employee of the Division of Labor finds that any amusement ride or amusement attraction is defective in a manner affecting patron safety or unsafe, he or she shall attach to the amusement ride or amusement attraction a notice and order prohibiting its use or operation. Operation of the amusement ride shall not

resume until the unsafe or hazardous condition is corrected and the director or his or her authorized representative permits such an operation.

(d) Any inspector certified pursuant to the requirements of this subchapter who, upon inspection of an amusement ride or amusement attraction, finds the amusement ride or amusement attraction to be defective or unsafe shall immediately report the amusement ride or amusement attraction and its condition to the division.

(e) The director shall charge a fee to be paid by the owner of any amusement ride or amusement attraction for all amusement ride safety inspections performed by any employee of the division. Such fees shall be as follows:

(1) For one (1) to five (5) amusement rides or amusement attractions, one hundred dollars (\$100);

(2) For six (6) to fifteen (15) amusement rides or amusement attractions, two hundred dollars (\$200);

(3) For sixteen (16) to twenty-five (25) amusement rides or amusement attractions, three hundred dollars (\$300);

(4) For twenty-six (26) to thirty-five (35) amusement rides or amusement attractions, four hundred dollars (\$400); and

(5) For thirty-six (36) and more amusement rides or amusement attractions, six hundred dollars (\$600).

(f) The director is authorized by rule to implement an inspection fee waiver program for the benefit of a county fair association, provided that:

(1) The county's population is under fifteen thousand (15,000) based on United States Bureau of the Census estimates as of July 1, 1999; and

(2) The county fair association can demonstrate that it would be unable to obtain a carnival for its county fair without such a waiver.

History. Acts 1983, No. 837, § 6; A.S.A. 1947, § 66-5906; Acts 1987, No. 839, § 3; 1995, No. 631, § 4; 2001, No. 1365, § 4; 2005, No. 924, § 2; 2013, No. 540, § 1; 2019, No. 315, §§ 2763, 2764; 2019, No. 585, § 1; 2019, No. 910, §§ 5509, 5510.

Amendments. The 2019 amendment by No. 315 substituted "rule" for "regulation" in (a)(4)(A) and the introductory language of (f).

The 2019 amendment by No. 585, in (a)(4)(A), substituted "inspected annually" for "inspected every six (6) months" and substituted "rules" for "regulation".

The 2019 amendment by No. 910 substituted "Division of Labor" for "Department of Labor" in (a)(1) and (c); and substituted "division" for "department" in (d) and the first sentence of the introductory language of (e).

23-89-507. Inspection by insurance company — Change in coverage.

(a)(1) Except as provided in subdivision (a)(3) of this section, an insurance company insuring an operator of an amusement attraction or amusement ride as required in this subchapter shall inspect the amusement attraction or amusement ride of the insured for safety at least one (1) time each calendar year.

(2) The operator shall maintain a copy of a report required under subdivision (a)(1) of this section at the site of operation of the amusement attraction or amusement ride, together with proof of insurance coverage.

(3) An insurance company insuring an inflatable attraction is not required to perform an inspection of the inflatable attraction.

(b) If any insurer insuring an operator shall cancel the coverage of the operator, the insurer shall notify the Director of the Division of Labor of the cancellation at least ten (10) days before the cancellation is effective.

(c) The insurer shall immediately notify the director if the cancellation notice is rescinded or coverage is reinstated.

(d) If the insurer finds any amusement attraction or amusement ride to be unsafe or cancels the insurance coverage and so notifies the director, then the director shall immediately issue a cease and desist order preventing any operation until written documentation is provided to the director that the amusement attraction or amusement ride has been made safe or insurance coverage has been obtained.

(e) Any insurance company or surplus lines insurer failing to comply with this section shall be subject to revocation of its certificate of authority or registration by the Insurance Commissioner, or in lieu of suspension or revocation, a fine assessed by the commissioner of not more than fifty thousand dollars (\$50,000).

(f) Any employee or contractor of an insurer inspecting amusement rides in Arkansas shall be registered and certified by the Division of Labor pursuant to rule adopted by the director.

History. Acts 1983, No. 837, § 4; A.S.A. 1947, § 66-5904; Acts 1987, No. 839, § 2; 1995, No. 631, § 5; 2001, No. 1365, § 5; 2019, No. 315, § 2765; 2019, No. 585, § 2; 2019, No. 910, §§ 5511, 5512.

Amendments. The 2019 amendment by No. 315 substituted “rule” for “regulation” in (f).

The 2019 amendment by No. 585, in (a)(1), substituted “Except as provided in

subdivision (a)(3) of this section, an insurance company” for “Each insurance company”, and substituted “ride” for “rides”; substituted “copy of a report required under subdivision (a)(1) of this section” for “copy of such a report”; and added (a)(3).

The 2019 amendment by No. 910 substituted “Division of Labor” for “Department of Labor” in (b) and (f).

23-89-508. Rules.

The Director of the Division of Labor is authorized to adopt appropriate rules to carry out the intent and purposes of this subchapter and to assure its efficient and effective enforcement.

History. Acts 1983, No. 837, § 7; A.S.A. 1947, § 66-5907; Acts 1995, No. 631, § 6; 2019, No. 315, § 2766; 2019, No. 910, § 5513.

Amendments. The 2019 amendment by No. 315 deleted “and regulations” fol-

lowing “rules” in the section heading and in the text.

The 2019 amendment by No. 910 substituted “Division of Labor” for “Department of Labor”.

23-89-509. Cease and desist orders — Notice required.

(a)(1) Upon issuance of cease and desist orders pursuant to § 23-89-504 or § 23-89-507, the Director of the Division of Labor shall promptly transmit his or her order to the Director of the Division of Arkansas State Police.

(2) Whenever possible, the Director of the Division of Labor shall notify any applicable fair boards or sponsoring organizations in the respective districts or counties of this state where the amusement attractions or amusement rides are in operation or are scheduled to be in operation.

(3) The Director of the Division of Labor shall promptly notify these parties when a cease and desist order has been rescinded upon proof of the operator's compliance with the provisions of this subchapter.

(b) Upon receipt of the Director of the Division of Labor's order to cease and desist operations pursuant to subsection (a) of this section, the Division of Arkansas State Police shall promptly serve the order on the operator and order the operator immediately to cease operation of all applicable amusement attractions or amusement rides in operation or scheduled to be in operation in those districts or counties until the cease and desist order has been rescinded.

History. Acts 1987, No. 839, § 2; 1995, No. 631, § 7; 2019, No. 910, § 5514.

Amendments. The 2019 amendment, throughout the section, substituted "Divi-

sion of Labor" for "Department of Labor" and "Division of Arkansas State Police" for "Department of Arkansas State Police".

23-89-510. Accidents — Reporting injuries or death — Investigations.

(a) Any mechanical, structural, or electrical defects directly affecting patron safety for which an amusement ride is closed to patron use for a period of time more than three (3) hours must be reported in writing personally or by facsimile by the owner or operator to the Division of Labor within twenty-four (24) hours after the closing of the amusement ride.

(b)(1) The operator of an amusement ride shall immediately cease to operate any ride involved in a fatality or serious physical injury. The owner or operator shall notify the division of such an accident within four (4) hours of its occurrence by telephone or facsimile. The owner or operator shall file a written accident report personally or by facsimile with the division within twenty-four (24) hours of the accident. Within twenty-four (24) hours after receipt of such a report, the division shall initiate an investigation of the occurrence and an inspection of the ride. The division shall perform the inspection in a manner that proceeds with all practicable speed and minimizes the disruption of the amusement facility at which the amusement ride is located.

(2) Unless authorized in writing by the division, no amusement ride may be operated, moved, altered, repaired, or tampered with, except to protect life, limb, and property following an accident involving a serious

injury or death until the division has completed its inspection and investigation.

History. Acts 2001, No. 1365, § 6; 2019, No. 910, § 5515.

Amendments. The 2019 amendment substituted "Division of Labor" for "Department of Labor" in (a); and substituted "division" for "department" throughout (b).

23-89-515. Nondestructive testing.

(a) An owner may not operate an amusement ride for which the manufacturer recommends nondestructive testing, unless the owner complies with the manufacturer's standards for the testing and the ride meets the manufacturer's acceptance criteria.

(b)(1) If a manufacturer's nondestructive testing standards are unavailable for an amusement ride and the Division of Labor deems it necessary, the owner shall provide the standards through a professional engineer as defined in § 17-30-101, an engineering agency, or an individual qualified by training and experience to compile standards based on the ride's specifications and history and using accepted engineering practices.

(2) The professional engineer or other qualified individual shall be approved by the Director of the Division of Labor.

(3) The amusement ride shall meet the criteria established under this subsection.

History. Acts 2001, No. 1365, § 11; 2011, No. 897, § 17; 2019, No. 910, § 5516.

Amendments. The 2019 amendment substituted "Division of Labor" for "Department of Labor" in (b)(1) and (b)(2).

23-89-516. Records.

(a) The Director of the Division of Labor shall keep records and statistics by year of serious injuries and fatalities resulting from amusement ride accidents. Such records and statistics shall specify the year of the accident, type of injury, type of amusement ride or amusement attraction involved, and cause of the accident.

(b) Each owner or operator shall retain on the premises or with a portable amusement ride the following records:

(1) Proof of insurance coverage as required by this subchapter;

(2) The latest safety inspection report by the Division of Labor and by the owner or operator's insurer;

(3) All maintenance and repair records for a period of one (1) year;

(4) All accident records for a period of one (1) year on premises, although such records shall be maintained and subject to being made available to the director for a period of three (3) years;

(5) A record of employee or operator training for each employee authorized to operate, assemble, disassemble, transport, or conduct maintenance on an amusement ride or amusement attraction; and

(6) A copy of any affidavit of nondestructive testing required by this subchapter.

History. Acts 2001, No. 1365, § 12; substituted “Division of Labor” for “Department of Labor” in (a) and (b)(2).
2019, No. 910, §§ 5517, 5518.

Amendments. The 2019 amendment

23-89-517. Disposition of funds.

All money received under the provisions of this subchapter shall be deposited into the State Treasury to the credit of the Department of Labor and Licensing Special Fund.

History. Acts 2001, No. 1365, § 13; substituted “Department of Labor and Licensing Special Fund” for “Department of Labor Special Fund”.
2019, No. 910, § 5519.

Amendments. The 2019 amendment

23-89-518. Amusement Ride Safety Advisory Board — Creation — Duties.

(a)(1) There is created an Amusement Ride Safety Advisory Board.

(2)(A) The board shall be appointed by the Governor.

(B) The Director of the Division of Labor or his or her designee shall be ex officio chair.

(C) The board shall consist of five (5) additional members:

(i) One (1) member of the board shall be the Secretary of the Department of Parks, Heritage, and Tourism or his or her designee;

(ii) One (1) member of the board shall represent owners or operators of amusement rides that are portable in nature;

(iii) One (1) member of the board shall represent owners or operators of permanently placed amusement rides;

(iv) One (1) member of the board shall represent fair managers in Arkansas; and

(v) One (1) member of the board shall represent the general public.

(3)(A) Except for the director and the secretary, the terms of office of the members shall be for four (4) years or until a successor is appointed.

(B) No member of the board shall be appointed to serve more than two (2) consecutive full terms.

(C) At the time of appointment or reappointment, the Governor shall adjust the length of terms to ensure that the terms of board members are staggered so that, insofar as is possible, an equal number of members shall rotate each year.

(b) The duties of the board shall be:

(1) To assist the director with the formulation of rules regarding the safe operation of amusement rides; and

(2) To give the Division of Labor such counsel and advice as will aid it in the proper enforcement and administration of the provisions of this subchapter.

(c) Except for the ex officio chair and the secretary, the members of the board may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 2001, No. 1365, § 14; 2003, No. 600, § 1; 2019, No. 315, § 2767; 2019, No. 910, §§ 5520-5524.

Amendments. The 2019 amendment by No. 315 deleted “and regulations” following “rules” in (b)(1).

The 2019 amendment by No. 910, throughout the section, substituted “Divi-

sion of Labor” for “Department of Labor” and “Secretary of the Department of Parks, Heritage, and Tourism” for “Director of the Department of Parks and Tourism”.

CHAPTER 90

ARKANSAS PROPERTY AND CASUALTY INSURANCE GUARANTY ACT

SECTION.

23-90-103. Definitions.

23-90-122. Rules.

23-90-103. Definitions.

As used in this chapter:

(1) “Commissioner” means the Insurance Commissioner;

(2)(A)(i) “Covered claim” means an unpaid claim of an insured or third-party liability claimant which arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this chapter applies, and which is issued or assumed, whereby an assumption certificate is issued to the insured, by an insurer licensed to do business in this state, in cases in which the insurer becomes an insolvent insurer and the third-party claimant or liability claimant or insured is a resident of this state at the time of the insured event, or the property from which the claim arises is permanently located in this state.

(ii) Covered claims shall also include one hundred percent (100%) of unearned premiums up to an amount not exceeding twenty-five thousand dollars (\$25,000) per policy.

(iii) Individual covered claims, excluding workers’ compensation claims, shall be limited to three hundred thousand dollars (\$300,000) and shall not include any amount in excess of three hundred thousand dollars (\$300,000).

(B) A covered claim shall not include an unpaid claim of an insured or third-party liability claimant whose net worth as of December 31 of the year next preceding the date the insurer becomes an insolvent insurer exceeds fifty million dollars (\$50,000,000). However, an insured’s or third-party liability claimant’s net worth on that date shall be deemed to include the aggregate net worth of the insured or third-party liability claimant and all of its affiliates as calculated on a consolidated basis.

(C) A covered claim shall not include any of the following amounts:

(i) Any amount awarded as punitive or exemplary damages;

(ii) Any amount sought as return of premium under any retrospective rating plan; or

(iii) Any amount due to any reinsurer, insurer, insurance pool, or underwriting association as subrogation recoveries or otherwise. This subdivision (2) shall not prevent the reinsurer, insurer, insurance pool, or underwriting association from presenting the excluded claim to the insolvent insurer or the liquidator, but the claim shall not be asserted against any other person, including the person to whom benefits were paid or the insured of the insolvent insurer, except to the extent that the claim is outside the coverage provided herein or is in excess of the limits of the policy issued by the insolvent insurer.

(D)(i) A covered claim shall not include supplementary payment obligations, including, but not limited to, adjustment fees and expenses, attorney's fees and expenses, court costs, interest, and bond premiums incurred prior to the determination that an insurer is an insolvent insurer under this chapter;

(ii) With respect to a covered claim for unearned premiums, persons who were residents of this state at the time the policy was issued and persons who are residents of this state at the time the company is found to be an insolvent insurer shall be considered to have covered claims under this chapter;

(3) "Insolvent insurer" means an insurer which, after March 30, 1977, is determined to be insolvent by a court of competent jurisdiction;

(4)(A) "Insurer" means any person who writes any kind of insurance to which this chapter applies under § 23-90-104, including the exchange of reciprocal or inter-insurance contracts, and is licensed to transact insurance in this state.

(B) However, this chapter shall not apply to those persons transacting business as a farmers' mutual aid association pursuant to §§ 23-73-101 — 23-73-107, 23-73-110 — 23-73-114, and 23-73-116;

(5)(A) "Net direct written premiums" means the gross amount of premiums received from policies of insurance issued in this state to which this chapter applies, less return premiums and dividends paid or credited to policyholders.

(B) "Net direct written premiums" does not include premiums for indemnity reinsurance accepted from other licensed insurers, and there shall be no deductions for premiums for indemnity reinsurance ceded to other insurers;

(6) "Payment of covered claims" means actual payment and also means utilization of funds derived from assessments for consummation of contracts of reinsurance or assumption of liabilities or contracts of substitution to provide for liabilities for covered claims; and

(7) "Person" means any individual, corporation, partnership, association, or voluntary organization.

History. Acts 1977, No. 871, § 5; A.S.A. 1947, § 66-5505; Acts 1987, No. 738, § 2; 1993, No. 901, § 45; 1995, No. 1272, § 25; 1999, No. 881, § 15; 2017, No. 283, § 18.

Amendments. The 2017 amendment inserted "excluding workers' compensation claims" in (2)(A)(iii).

23-90-122. Rules.

The State Insurance Department is authorized and directed to issue such reasonable rules as may be necessary to carry out the various purposes and provisions of this chapter, and in augmentation thereof.

History. Acts 1977, No. 871, § 17; A.S.A. 1947, § 66-5517; Acts 2019, No. 315, § 2768. **Amendments.** The 2019 amendment deleted “and regulations” following “rules” in the section heading and in the text.

CHAPTER 91

PREPAID LEGAL INSURANCE

SUBCHAPTER.

2. ARKANSAS LEGAL INSURANCE ACT.

SUBCHAPTER 2 — ARKANSAS LEGAL INSURANCE ACT

SECTION.

23-91-204. Applicability of insurance law.
23-91-209. Conditions for issuing certificate of authority.

SECTION.

23-91-224. Authority to promulgate rules.

23-91-204. Applicability of insurance law.

(a) The provisions of the insurance law apply generally to legal insurance offered by insurers licensed to write other kinds of insurance. However, legal insurance sold by insurers under a certificate of authority obtained under this subchapter shall be regulated by the provisions of §§ 23-91-202, 23-91-203, 23-91-206, 23-91-208 — 23-91-212, 23-91-214, 23-91-219, 23-91-221, 23-91-224, and 23-91-226 instead of corresponding sections of the Arkansas Insurance Code.

(b) Orders or rules of the Insurance Commissioner issued under the provisions of this subchapter shall be subject to the provisions of the general insurance laws and the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq., relating to hearings and appeals.

(c) Except as otherwise provided in this subchapter, the provisions of the general insurance law shall not apply to insurers authorized under this subchapter.

History. Acts 1977, No. 368, §§ 22, 23; A.S.A. 1947, §§ 66-5422, 66-5423; Acts 2019, No. 315, § 2769. **Amendments.** The 2019 amendment substituted “or rules” for “rules or regulations” in (b).

23-91-209. Conditions for issuing certificate of authority.

(a) Upon receipt of an application for a certificate of authority, the Insurance Commissioner shall issue or deny a certificate pursuant to this subchapter within sixty (60) days of the application. This may be extended for an additional thirty (30) days by notice to the applicant

prior to the expiration of the first sixty (60) days. A certificate of authority shall be issued upon payment of the application fee prescribed in § 23-91-225 if the commissioner is satisfied that the following conditions are met:

(1) The persons responsible for the conduct of the affairs of the applicant are competent, trustworthy, and of good reputation;

(2) The applicant has paid-in capital in an amount not less than one hundred thousand dollars (\$100,000) and additional working capital or surplus funds in an amount deemed by the commissioner to be adequate in relation to the proposed plan of operation; and

(3) The applicant demonstrates the willingness and ability to assure that the promised benefits can be provided. In making this determination, the commissioner shall consider so far as applicable:

(A) Any agreements with lawyers or paralegal personnel for the provisions of legal services;

(B) The financial soundness of the applicant's arrangements for legal services and the schedule of rates proposed to be used in connection therewith;

(C) Any agreement with another person authorized under this subchapter, an insurer licensed under the general insurance laws to do business in this state, a reinsurer eligible under the laws or rules of this state to provide reinsurance, or an agency of the federal or state government for insuring the payment of the cost of legal services or the provision for automatic applicability of an alternative coverage in the event the insurer is unable to perform its obligation;

(D) Any deposit of securities, in kind and an amount determined to be appropriate by the commissioner, as a guarantee that the obligations to provide the promised benefits will be performed; and

(E) If the applicant is licensed as an insurer under other insurance laws, whether the applicant has complied with the requirements of those laws.

(b) A certificate of authority shall be issued in accordance with this subchapter and may be continued within the applicable provisions of § 23-63-211, but reference therein to § 23-63-216 and payment of taxes shall instead refer to the applicable provision of this subchapter.

History. Acts 1977, No. 368, § 4; A.S.A. 1947, § 66-5404; Acts 1987, No. 456, § 26; 2001, No. 1604, § 117; 2019, No. 315, § 2770.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (a)(3)(C).

23-91-224. Authority to promulgate rules.

The Insurance Commissioner may promulgate such reasonable rules as are necessary or proper to carry out the provisions of this subchapter.

History. Acts 1977, No. 368, § 17; A.S.A. 1947, § 66-5417; Acts 2019, No. 315, § 2771.

Amendments. The 2019 amendment deleted "or regulations" following "rules" in the text.

CHAPTER 92

MULTIPLE EMPLOYER TRUSTS AND SELF-INSURED PLANS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. THIRD-PARTY ADMINISTRATORS.
4. ARKANSAS PROFESSIONAL EMPLOYER ORGANIZATION RECOGNITION AND LICENSING ACT.
5. ARKANSAS PHARMACY BENEFITS MANAGER LICENSURE ACT.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

23-92-101. Registration or licensure required.

23-92-101. Registration or licensure required.

(a) “Multiple employer welfare arrangement” has the same meaning as under 29 U.S.C. § 1002(40), as it existed on January 1, 2019.

(b)(1) A fully insured multiple employer trust and fully insured multiple employer welfare arrangement that intends to provide benefits to citizens of this state shall register with the Insurance Commissioner before soliciting or enrolling members or before conducting any other business activity in Arkansas.

(2)(A) Each fully insured multiple employer trust and fully insured multiple employer welfare arrangement under this section that is conducting any business activity in Arkansas shall register with the commissioner.

(B) After the initial registration, a fully insured multiple employer trust and fully insured multiple employer welfare arrangement under this section that conducts business in Arkansas shall register with the commissioner no later than January 1 of each year for as long as it continues to do business in Arkansas.

(c)(1) A multiple employer trust or multiple employer welfare arrangement that is not fully insured shall obtain a certificate of authority under rules promulgated by the commissioner before doing business in Arkansas.

(2) In order to remain licensed, a multiple employer trust or multiple employer welfare arrangement that is not fully insured shall comply with applicable terms of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., as it existed on January 1, 2019.

(3)(A) The commissioner shall adopt rules regulating multiple employer trusts and multiple employer welfare arrangements that are not fully insured.

(B) The rules shall include information and procedures concerning:

(i) The criteria and application for obtaining a certificate of authority from the State Insurance Department to conduct business in

Arkansas that are not inconsistent with 29 C.F.R. § 2510.3-1 et seq., as it existed on January 1, 2019;

(ii) The benefits to be offered that are not inconsistent with similarly situated single employer plans;

(iii) Financial requirements consistent with sound actuarial principles;

(iv) Fees;

(v) Insolvency procedures;

(vi) Examinations;

(vii) Filing of forms and rates;

(viii) Written disclosures and other consumer protections;

(ix) Reporting requirements;

(x) Excess or stop loss insurance; and

(xi) Other factors the commissioner deems necessary for the effective regulation of multiple employer welfare trusts and multiple employer welfare arrangements that are not fully insured, if the requirements are not inconsistent with 29 C.F.R. § 2510.3-1 et seq., as it existed on January 1, 2019.

(d)(1) To the extent permitted by federal law, a fully insured or self-insured multiple employer welfare arrangement may include employers in a common trade or industry, employers representing two (2) or more trades or industries, sole proprietors, or working owners as defined in 29 C.F.R. § 2510.3-5(e), as it existed on January 1, 2019.

(2) The rules by which the multiple employer welfare arrangement shall abide are determined at the aggregate level so that in an arrangement in which the total number of employers in the multiple employer welfare arrangement, including working owners, exceeds fifty (50), the multiple employer welfare arrangement is subject to the requirements of the large group market.

History. Acts 1985, No. 795, §§ 1, 2; A.S.A. 1947, §§ 66-6001, 66-6002; Acts 2001, No. 1603, § 44; 2003, No. 516, § 6; 2005, No. 1697, § 22; 2019, No. 919, § 1.

Amendments. The 2019 amendment substituted “January 1, 2019” for “January 1, 2003” in (a); in (b)(1), substituted “A fully insured” for “Every fully insured”, substituted “Insurance Commissioner before soliciting” for “Insurance Commissioner prior to soliciting”, and substituted “members or before conducting” for “members or prior to conducting”; in (b)(2)(A), deleted “as of March 18, 2003” following “Arkansas” and deleted “no later than July 1, 2003” following “commissioner”; in (b)(2)(B), substituted “a fully insured” for “each fully insured” and deleted “thereafter” preceding “register”; in (c)(1), substituted “shall obtain” for “must obtain” and

substituted “rules” for “regulations”; in (c)(2), substituted “shall comply” for “must comply”, substituted “applicable terms of the Employee Retirement Income Security Act of 1974” for “all Arkansas laws that are not inconsistent with the Employee Retirement Income Security Act of 1974”, inserted “29 U.S.C. § 1001 et seq.”, and substituted “January 1, 2019” for “January 1, 2003”; added “that are not inconsistent with 29 C.F.R. § 2510, as it existed on January 1, 2019” in (c)(3)(B)(i); added “that are not inconsistent with similarly situated single employer plans” in (c)(3)(B)(ii); added “consistent with sound actuarial principles” in (c)(3)(B)(iii); added “if the requirements are not inconsistent with 29 C.F.R. § 2510, as it existed on January 1, 2019” in (c)(3)(B)(xi); added (d); and made stylistic changes.

SUBCHAPTER 2 — THIRD-PARTY ADMINISTRATORS

SECTION.

23-92-201. Definition.

23-92-203. Certificate of registration.

SECTION.

23-92-206. Collection of premiums, etc. —
Deposits and withdrawals.

Effective Dates. Identical Acts 2018 (2nd Ex. Sess.), Nos. 1 and 3, § 6: Sept. 1, 2018. Effective date clause provided: “SECTION 4 of this act is effective on and after September 1, 2018.”

23-92-201. Definition.

As used in this subchapter, “third-party administrator”:

(1) Means a person, firm, or partnership that collects or charges premiums from or adjusts or settles claims on residents of this state in connection with life or accident and health coverage provided by a self-insured plan or a multiple-employer trust or multiple-employer-welfare arrangement;

(2) Includes an administrative-services-only contract offered by insurers and health maintenance organizations; and

(3) Does not include:

(A) An employer, for its employees or for the employees of a subsidiary or affiliated corporation of the employer;

(B) A union, for its members;

(C) An insurer or health maintenance organization licensed to do business in this state;

(D) A creditor, for its debtors, regarding insurance covering a debt between the creditor and its debtors;

(E) A credit-card-issuing company that advances for, or collects premiums or charges from, its credit card holders, as long as that company does not adjust or settle claims;

(F) An individual who adjusts or settles claims in the normal course of his or her practice or employment and who does not collect charges or premiums in connection with life or accident and health coverage; or

(G) An agency licensed by the Insurance Commissioner and performing duties pursuant to an agency contract with an insurer authorized to do business in this state.

History. Acts 1985, No. 796, § 1; A.S.A. 1947, § 66-6003; Acts 2001, No. 1603, § 45; 2005, No. 1697, § 23; 2015, No. 689, § 1; 2017, No. 334, § 7; 2018 (2nd Ex. Sess.), No. 1, § 4; 2018 (2nd Ex. Sess.), No. 3, § 4.

Amendments. The 2015 amendment added designations (a) through (c); designated existing language as (a)(1); added

(a)(2) and (3); designated existing language as (b)(1); added (b)(2); and redesignated former (1) through (7) as (c)(1) through (7).

The 2017 amendment redesignated the former introductory language of (a) as the present undesignated introductory language; redesignated former (a)(2) and (a)(3) as (1) and (2); redesignated former

(a)(1) as (3)(A); redesignated former (b) and (c) as (3)(B) and (3)(C); and made stylistic changes.

The 2018 (2nd Ex. Sess.) amendment by identical acts Nos. 1 and 3 rewrote the section.

Effective Dates. Identical Acts 2018 (2nd Ex. Sess.), Nos. 1 and 3, § 6: Sept. 1, 2018. Effective date clause provided: "SECTION 4 of this act is effective on and after September 1, 2018."

23-92-203. Certificate of registration.

(a) No person shall act or hold himself or herself out as an administrator unless he or she obtains a certificate of registration from the Insurance Commissioner.

(b) The certificate may be obtained by submitting an application on a form prescribed by the commissioner, paying a twenty-five dollar (\$25.00) filing fee, and placing with the commissioner a surety bond as described in § 23-92-204.

(c) Each application shall have attached to it a list of all self-insured plans and trusts that have entered into service contracts with the applicant for administrative services. Every administrator shall update the list whenever changes occur.

(d) The certificate shall be issued by the commissioner unless, after a hearing, the commissioner determines that the applicant is:

- (1) Not competent;
- (2) Not trustworthy;
- (3) Not financially responsible; or
- (4) A convicted felon.

(e) Each certificate of registration shall be valid for the year issued and shall be renewed each year thereafter by submitting a twenty-five dollar (\$25.00) annual fee.

(f) After conducting a hearing and finding that an administrator has violated any of the requirements of this subchapter or fails to meet the requirements for the issuance of a certificate, the commissioner may revoke or suspend the certificate of registration.

(g) The provisions in this chapter establishing standards applicable to a third-party administrator under subsection (d) of this section or fiduciary standards under § 23-92-206 do not authorize the commissioner to regulate the actions of a third-party administrator if the actions are authorized or required under its administration of a self-insured plan or trust, or apply or enforce other insurance code provisions, rules, or other state laws, through such standards, for purposes of revocation or suspension of a third-party administrator's certificate.

History. Acts 1985, No. 796, §§ 7, 9; A.S.A. 1947, §§ 66-6009, 66-6011; Acts 2015, No. 689, § 2.

Amendments. The 2015 amendment added (g).

23-92-206. Collection of premiums, etc. — Deposits and withdrawals.

(a) An administrator is a fiduciary in collecting or returning premiums or charges for the party with whom it has a written agreement for administrative services.

(b) Funds collected by the administrator shall be immediately remitted to the person entitled to the funds or deposited in a separately identifiable bank account which shall be established and maintained by the administrator.

(c) The administrator shall maintain records clearly showing the deposits and withdrawals from the separately identifiable bank account for each party with whom it has a written agreement for administrative services. The administrator shall furnish to the party, upon his or her request, copies of the required records.

(d) Subject to the written agreement required by § 23-92-202, withdrawals from the bank account shall be made only for the following:

- (1) Remittance to a plan or trust entitled to the funds;
- (2) Deposit in an account maintained in the name of the party with whom the administrator has a written agreement;
- (3) Transfer to and deposit in a claims-paying account;
- (4) Payment to the administrator for its commission, fees, or charges;
- (5) Remittance of return premiums to the person entitled to the funds; or
- (6) Payment of funds for premiums of reinsurance or pursuant to the provisions of any other contract entered into by the trust or plan.

(e) This section does not apply to a third-party administrator as defined in § 23-92-201.

History. Acts 1985, No. 796, § 5; A.S.A. 1947, § 66-6007; Acts 2015, No. 689, § 3.

Amendments. The 2015 amendment added (e).

SUBCHAPTER 4 — ARKANSAS PROFESSIONAL EMPLOYER ORGANIZATION RECOGNITION AND LICENSING ACT

SECTION.

- 23-92-402. Definitions.
 23-92-403. Relationship to other laws.
 23-92-404. Licensing and renewal.
 23-92-407. Fees.
 23-92-408. Financial assurance required.
 23-92-409. Relationships defined.
 23-92-410. Issuance, refusal, suspension, or revocation of license — Grounds and procedure.

SECTION.

- 23-92-412. Penalties.
 23-92-413. Nondisclosure of proprietary information.
 23-92-414. Employer service assurance organization affidavit.
 23-92-419. Rules.

Effective Dates. Acts 2019, No. 910, § 6346(b); July 1, 2019. Emergency clause provided: "It is found and determined by

the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act estab-

lishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should be-

come effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

23-92-402. Definitions.

As used in this subchapter:

(1) "Client" means any person who enters into a coemployment relationship as a coemployer with a professional employer organization;

(2) "Coemployer" means a professional employer organization or a client of a professional employer organization;

(3) "Coemployment relationship" means:

(A) As between coemployers, a relationship in which the rights, duties, and obligations of an employer that arise out of an employment relationship have been allocated between coemployers under a professional employer agreement and this subchapter and which is intended to be an ongoing relationship rather than a temporary or project-specific relationship;

(B) As between each professional employer organization and a covered employee to which a professional employer agreement applies, an employment relationship in which:

(i) The professional employer organization is entitled to enforce the rights and is obligated to perform the duties and obligations allocated to the organization by the professional employer agreement and this subchapter; and

(ii) A covered employee is entitled to enforce against the professional employer organization the duties and obligations allocated to the organization by the professional employer agreement and this subchapter; and

(C) As between each client and a covered employee to which a professional employer agreement applies, an employment relationship in which each client:

(i) Is entitled to enforce the rights allocated to the client by the professional employer agreement and this subchapter;

(ii) Is obligated to provide and perform the employer obligations allocated to the client by the professional employer agreement and this subchapter; and

(iii) Is responsible for any employer right or obligation not otherwise allocated by the professional employer agreement or this subchapter;

(4) "Commissioner" means the Insurance Commissioner;

(5) "Controlling person" means:

(A) Any natural person who directly or indirectly possesses the power to direct or cause the direction of the management or policies of any professional employer organization, including:

(i) Direct or indirect control of ten percent (10%) or more of an ownership interest bearing the right to participate in policy making for the professional employer organization; or

(ii) The general power to endorse any negotiable instrument payable to or on behalf of the professional employer organization or to cause the direction of the management or policies of any professional employer organization; and

(B) Any natural person employed, appointed, or authorized by a professional employer organization to enter into a contractual relationship with a client company on behalf of the professional employer organization;

(6)(A) "Covered employee" means an individual having a coemployment relationship with a professional employer organization and a client who has entered into a professional employer agreement with respect to the employee.

(B) "Covered employee" includes the client's officers, directors, shareholders, partners, and managers to the extent that those persons act as operational managers or perform services for the client;

(7) "Department" means the State Insurance Department;

(8) "Employer service assurance organization" means an organization licensed under § 23-92-415;

(9) "Licensee" means a professional employer organization licensed under this subchapter;

(10) "Person" means any individual, partnership, corporation, limited liability company, association, or any legally recognized entity, however formed;

(11) "Professional employer agreement" means a written contract by and between a client and a professional employer organization under which the professional employer organization and the client agree to establish a coemployment relationship and which satisfies the requirements of § 23-92-409(c);

(12) "Professional employer organization" means any person engaged in the business of providing professional employer services;

(13)(A) "Professional employer organization group" means two (2) or more affiliated professional employer organizations.

(B) Two (2) or more professional employer organizations are affiliated if they have common owners having ownership interests in them of greater than fifty percent (50%);

(14) "Professional employer organization service organization affidavit" means an attestation or certification of a professional employer organization service organization and any additional information that conforms to the requirements in the rules as promulgated by the commissioner;

(15)(A) "Professional employer services" means the service of entering into a coemployment relationship under this subchapter in which

at least a majority of the employees providing services to a client or to a division or work unit of a client are covered employees and in which:

(i) The arrangement is intended to be, or is, ongoing rather than temporary in nature; and

(ii) Employer responsibilities, including the right of direction and control of the employees, are shared by the professional employer organization and the recipient.

(B) "Professional employer services" does not include services performed by temporary employees or by persons determined to be independent contractors with respect to the recipient;

(16)(A) "Temporary help services" means services consisting of a person:

(i) Recruiting and hiring its own employees;

(ii) Finding other organizations that need the services of those employees;

(iii) Assigning those employees to perform work at or for the other organizations to support or supplement the other organizations' workforces or to provide assistance in special work situations, such as, but not limited to, employee absences, skill shortages, seasonal workloads, or to perform special assignments or projects; and

(iv) Customarily attempting to reassign the employees to other organizations when they finish each assignment.

(B) "Temporary help services" shall not be deemed professional employer services; and

(17)(A) "Transacting insurance" includes any of the following actions by a professional employer organization or its representatives:

(i) Soliciting prospective clients based solely or primarily on representation of insurance cost advantages;

(ii) Advising a prospective client regarding insurance coverage; or

(iii) Offering for sale or selling a policy of insurance to a client or employee.

(B) "Transacting insurance" does not include any of the following actions by a professional employer organization or its representatives:

(i) Soliciting prospective clients to enter into professional employee agreements;

(ii) Collecting information from a prospective client related to payroll, employee benefits, employment policies, workplace safety, and other employer responsibilities and operational experience;

(iii) Evaluating collected information to ascertain the professional employer organization's risk and cost associated with serving a prospective client's workforce;

(iv) Informing a prospective client of the terms and conditions under which the professional employer organization will enter into a professional employer agreement; or

(v) Performing employer responsibilities as required by this subchapter.

History. Acts 2003, No. 1750, § 1; deleted “and regulations” following “rules” 2019, No. 315, § 2772. in (14).

Amendments. The 2019 amendment

23-92-403. Relationship to other laws.

(a)(1) Neither this subchapter nor any professional employer agreement shall affect, modify, or amend any collective bargaining agreement or the rights or obligations of any client, professional employer organization, or covered employee under the National Labor Relations Act, as it existed on January 1, 2003.

(2) This subchapter preserves all rights to which a covered employee would be entitled under a traditional employment relationship.

(b) Neither this subchapter nor any professional employer agreement shall affect, modify, or amend any state, local, or federal licensing, registration, or certification requirement applicable to any client or covered employee.

(c) A covered employee who must be licensed, registered, or certified according to law or regulation is deemed solely an employee of the client for purposes of any license, registration, or certification requirement.

(d) A professional employer organization shall not be deemed to engage in any occupation, trade, profession, or other activity that is subject to licensing, registration, or certification requirements, or is otherwise regulated by a governmental entity, solely by entering into and maintaining a coemployment relationship with a covered employee who is subject to this subchapter or to rules promulgated under this subchapter.

(e)(1) For purposes of determination of tax credits and other economic incentives provided by Arkansas that are based on employment, covered employees are deemed employees solely of the client.

(2) A client is entitled to the benefit of any tax credit, economic incentive, or other benefit arising as the result of the employment of covered employees of the client.

(3) Upon request by a client, each professional employer organization shall provide employment information reasonably required by an Arkansas agency or department that is necessary to support any request, claim, application, or other action by a client seeking any tax credit or economic incentive under subdivision (e)(2) of this section.

(f)(1) Applicants for licensing or a professional employer organization licensed under this subchapter authorize the Division of Workforce Services, the Workers' Compensation Commission, and the State Insurance Department, or their successors, to release otherwise confidential information to the other departments or commission in this subdivision (f)(1) concerning the applicant or professional employer organization upon the written request by the requesting department or commission.

(2) The Division of Workforce Services, the Workers' Compensation Commission, and the State Insurance Department shall maintain the confidentiality of information received under subdivision (f)(1) of this

section unless the information is introduced into evidence at an administrative proceeding or at a civil or criminal trial arising out of a violation of this subchapter that involves the applicant, the professional employer organization, or the controlling person.

(g) Neither this subchapter nor any professional employer agreement shall affect, limit, restrict, or modify the rights or obligations of any client, professional employer organization, or covered employee with respect to:

(1) The payment of wages as required by contract or by state or federal law; and

(2) Compliance with the following:

(A) Section 11-2-101 et seq., § 11-3-101 et seq., § 11-4-101 et seq., § 11-5-101 et seq., § 11-6-101 et seq., § 11-7-201 et seq., the Division of Workforce Services Law, § 11-10-101 et seq., and § 11-12-101 et seq.;

(B) Section 20-20-301 et seq.;

(C) Section 22-9-301 et seq., commonly referred to as the “Arkansas Prevailing Wage Law”;

(D) The Arkansas Civil Rights Act of 1993, § 16-123-101 et seq.;

(E) The Public Employees’ Chemical Right to Know Act, § 8-7-1001 et seq.; and

(F) Section 7-1-102, concerning voting time; § 16-31-106, concerning jury duty; and § 21-4-101, concerning leave of absence for public service.

History. Acts 2003, No. 1750, § 1; 2019, No. 315, § 2773; 2019, No. 910, §§ 607, 608.

Amendments. The 2019 amendment by No. 315 substituted “rules” for “regulations” in (d).

The 2019 amendment by No. 910 substituted “Division of Workforce Services”

for “Department of Workforce Services” in (f)(1) and (f)(2); and substituted “Division of Workforce Services Law” for “Department of Workforce Services Law” in (g)(2)(A).

23-92-404. Licensing and renewal.

(a) Except as otherwise provided in this subchapter, no person shall provide, advertise, or otherwise hold itself out as providing professional employer services in Arkansas unless the person is licensed as a professional service organization under this subchapter.

(b)(1) Each professional employer organization required to be licensed under this subchapter shall provide the Insurance Commissioner information required by the commissioner on forms prescribed by the commissioner.

(2) The information required under subdivision (b)(1) of this section shall include the following information:

(A) The legal name of the professional employer organization and all other names under which the professional employer organization conducts business;

(B) The address of the principal place of business of the professional employer organization and the address of each office it maintains in Arkansas;

(C) The professional employer organization's taxpayer or employer identification number;

(D) A list by jurisdiction of each name under which the professional employer organization has operated in the preceding five (5) years, including any fictitious names, alternative names, names of predecessors, and, if known, successor business entities;

(E) A statement of ownership that shall include the name and evidence of the business experience of all controlling persons;

(F) A statement of each controlling person disclosing any interest in any other professional employer organization, whether licensed or not in Arkansas, in which the controlling person has a ten percent (10%) or greater interest;

(G) A statement of management, which shall include the name and evidence of the business experience of any person who serves as president or chief executive officer or otherwise has the authority to act as senior executive officer of the professional employer organization; and

(H)(i) A financial statement setting forth the financial condition of the professional employer organization as of a date not earlier than one hundred eighty (180) days before the date the financial statement is submitted to the commissioner.

(ii) The financial statement under subdivision (b)(1)(H)(i) of this section shall be prepared in accordance with generally accepted accounting principles, and unless the professional employer organization provides financial assurance as set forth in § 23-92-408(a)(2), the financial statement shall be audited by an independent certified public accountant licensed to practice in Arkansas or the state of domicile of the professional employer organization.

(iii) A professional employer organization group may submit combined or consolidated financial statements to meet the requirements of this section.

(c)(1) Each professional employer organization operating within this state as of July 16, 2003, shall complete its initial licensing no later than December 31, 2003.

(2) Each professional employer organization not operating within Arkansas as of July 16, 2003, shall complete its initial licensing before beginning operations within this state.

(d)(1) No later than the biennial anniversary date of its licensing, each licensee shall renew its licensing by notifying the commissioner of any changes in the information provided in the licensee's most recent licensing or renewal and by paying a renewal fee.

(2) If a licensee under this subchapter fails to renew its license at the time of renewal and pay the renewal fee, its license shall become delinquent.

(3)(A) Licensees under this subchapter shall have thirty (30) days after the renewal date in which to renew their licenses and pay in

addition to the renewal fee under subdivision (d)(1) of this section a late fee not to exceed one thousand dollars (\$1,000).

(B) If payment is not received within the thirty-day time period under subdivision (d)(3)(A) of this section:

(i) The license shall automatically become void without further action by the commissioner; and

(ii)(a) The commissioner shall enter a temporary order compelling the professional employer organization to cease and desist from any professional employer services in Arkansas.

(b) The order under subdivision (d)(3)(B)(ii)(a) of this section shall provide for an opportunity for the professional employer organization to request a hearing.

(c) If the professional employer organization does not request a hearing within thirty (30) days after the entry of the order or if the commissioner finds after a hearing that the professional employer organization's license should not be renewed, the order entered under subdivision (d)(3)(B)(ii)(a) of this section shall become permanent.

(d) The commissioner shall provide a copy of the order entered under subdivision (d)(3)(B)(ii)(a) of this section to the Workers' Compensation Commission and the Division of Workforce Services or their successors.

(e)(1) A professional employer organization group may satisfy any reporting and financial requirements of this subchapter on a consolidated basis.

(2) As a condition of licensing as a professional employer organization group, each affiliate of the professional employer organization group shall guarantee payment of all financial obligations with respect to wages, employment taxes, and employee benefits of each affiliate of the professional employer organization group.

(f)(1) A professional employer organization is exempt from the licensing requirements contained in subsections (a)-(e) of this section and §§ 23-92-405, 23-92-406, and 23-92-408 if the professional employer organization:

(A) Submits a properly executed request for exemption on a form provided by the State Insurance Department;

(B) Is domiciled outside of Arkansas and is licensed or registered as a professional employer organization in another state that has requirements the same or greater than this subchapter;

(C) Does not maintain an office in this state or solicit in any manner clients located or domiciled within this state; and

(D) Has one hundred (100) or fewer covered employees employed or domiciled in Arkansas.

(2) A professional employer organization's exemption from the licensing requirements under this subchapter shall be valid for two (2) years, subject to renewal, for as long as the professional employer organization:

(A) Continues to qualify for the exemption; and

(B) On or before the biennial anniversary date of the original grant of exemption, requests the exemption to continue.

(g) The commissioner shall maintain a list of professional employer organizations licensed or exempted under this subchapter.

(h) The commissioner may prescribe forms necessary to promote the efficient administration of this section.

(i) The commissioner shall reject an application for a license or for an exemption from license if the commissioner finds that:

(1) Any controlling person named in the license or exemption application is not of good moral character, business integrity, or financial responsibility; or

(2) The controlling person has violated a provision of this subchapter.

(j) A person engaged in the business of providing professional employer services shall be subject to licensing under this subchapter regardless of its use of the name “professional employer organization”, “PEO”, “staff leasing company”, “licensed staff leasing company”, “employee leasing company”, or any other name.

History. Acts 2003, No. 1750, § 1; substituted “Division of Workforce Services” for “Department of Workforce Services” in (d)(3)(B)(ii)(d).
2019, No. 910, § 609.

Amendments. The 2019 amendment

23-92-407. Fees.

(a) Upon filing an initial licensing statement under this subchapter, a professional employer organization shall pay an initial licensing fee of one thousand dollars (\$1,000).

(b) Upon each biennial renewal of a licensing statement filed under this subchapter, a professional employer organization shall pay a renewal fee of one thousand dollars (\$1,000).

(c) Each professional employer organization exempt from licensing under the terms of this subchapter shall pay an exemption fee in the amount of fifty dollars (\$50.00) upon initial application for exemption and upon each biennial renewal of the exemption.

(d) Upon the filing of each request for a change in ownership or controlling person filed under this subchapter, a professional employer organization shall pay a change-in-ownership fee of five hundred dollars (\$500).

(e) By rule, the Insurance Commissioner may increase, decrease, or eliminate any fee provided for in this section, but no fee provided for in this section shall ever exceed five thousand dollars (\$5,000).

History. Acts 2003, No. 1750, § 1; substituted “rule” for “regulation” in (e).
2019, No. 315, § 2774.

23-92-408. Financial assurance required.

(a) Each professional employer organization shall maintain:

(1) An audited minimum net worth of at least one hundred thousand dollars (\$100,000), as reflected in the financial statements submitted to the Insurance Commissioner with the initial licensing, and annually thereafter; or

(2)(A) A bond in the amount of at least one hundred thousand dollars (\$100,000).

(B) The terms and conditions of the bond shall be approved by the commissioner.

(C) The bond shall be conditioned so that the licensee and each member, employee, shareholder, or officer of a person, firm, partnership, corporation, or association operating as an agent of the licensee shall not:

(i) Violate the provisions of this subchapter or violate rules or orders lawfully promulgated by the commissioner under this subchapter; or

(ii) Fail to pay any wages due under any contract made by the licensee in the conduct of its business subject to this subchapter.

(D) The bond required by this section shall be a surety bond issued by a corporate surety or insurer authorized to do business in Arkansas.

(E) In lieu of a bond, the professional employer organization may deposit either:

(i) Securities with a minimum market value of at least one hundred thousand dollars (\$100,000) with an approved depository under an approved depository agreement under § 23-69-134(b)(4); or

(ii) An irrevocable letter of credit in a face amount of not less than one hundred thousand dollars (\$100,000) in a form that is acceptable to the commissioner.

(F) The bond, deposited securities, or letter of credit shall secure payment by the professional employer organization of all taxes, wages, benefits, or other entitlement due to or with respect to a covered employee if the professional employer organization does not make the payments when due.

(G) Any securities deposited under this subsection may be included for the purpose of calculation of the minimum net worth required by this subsection.

(b)(1) Within forty-five (45) days after the end of each calendar quarter, a professional employer organization shall submit to the commissioner a statement by an independent certified public accountant that all applicable state payroll taxes for covered employees located in this state have been paid on a timely basis for that quarter.

(2) The statement shall be either in the form of an examination level attestation or shall be based upon agreed-upon procedures acceptable to the commissioner.

(3) The commissioner shall issue by rule requirements for procedures referred to in subdivision (b)(2) of this section.

(c)(1) If any person is aggrieved by the misconduct of any licensee, that person may maintain an action in his or her own name upon the bond or assets of the professional employer organization in any court of competent jurisdiction in this state.

(2) All claims shall be assignable, and the assignee shall be entitled to the same remedies upon the bond of the licensee as the aggrieved person would have been entitled if the claim had not been assigned.

(3) Any assignable claim under subdivision (c)(2) of this section may be enforced in the name of the assignee.

(4) Any remedy provided by this section is in addition to any other remedy which otherwise exists.

(d) An action on the bond or other security required by this section may be maintained by the commissioner in the name of the State of Arkansas in any court of competent jurisdiction in this state for the benefit of any person or persons aggrieved by the misconduct of the licensee.

(e)(1) If any licensee fails to file a new bond with the commissioner within thirty (30) days after notice of cancellation by the surety of the bond required by this section, the license issued to the licensee or the principal under the bond shall be deemed suspended until a new surety bond is filed with and approved by the commissioner.

(2) A person whose license is suspended under this section shall not carry on the business of a professional employer organization during the period of the suspension.

History. Acts 2003, No. 1750, § 1; deleted “regulations” following “rules” in 2019, No. 315, § 2775.

(a)(2)(C)(i).

Amendments. The 2019 amendment

23-92-409. Relationships defined.

(a)(1) Except as specifically provided in this subchapter, the coemployment relationship between the client and the professional employer organization and between each coemployer and each covered employee shall be governed by the professional employer agreement.

(2) Neither this subchapter nor any professional employer agreement shall:

(A) Diminish, abolish, or remove rights of covered employees as to clients or obligations of clients as to a covered employee that existed before the effective date of a professional employer agreement;

(B) Terminate an employment relationship existing before the effective date of a professional employer agreement; or

(C) Create any new or additional enforcement right of a covered employee against a professional employer organization not specifically allocated to the professional employer organization in the professional employer agreement or under this subchapter.

(b) Except as specifically provided in this subchapter or in the professional employer agreement, in each coemployment relationship:

(1) The client is entitled to exercise all rights and is obligated to perform all duties and responsibilities otherwise applicable to an employer in an employment relationship; and

(2)(A) The professional employer organization shall be entitled to exercise only the rights and obligated to perform only the duties and responsibilities specifically required by this subchapter or by the professional employer agreement.

(B) The rights, duties, and obligations of the professional employer organization as coemployer with respect to any covered employee is

limited to those rights during and obligations arising under the professional employer agreement and this subchapter during the term of coemployment by the professional employer organization of the covered employee.

(c) Each professional employer agreement shall include, at a minimum, the following:

(1)(A) The professional employer organization shall reserve a right of direction and control over the covered employees.

(B) However, the client may retain the right to exercise direction and control over covered employees as is necessary to:

(i) Conduct the client's business;

(ii) Discharge any fiduciary responsibility that it may have; or

(iii) Comply with any applicable licensing requirements;

(2) The professional employer organization shall:

(A) Pay wages and salaries to covered employees;

(B) Withhold, collect, report, and remit payroll-related and employment taxes; and

(C) To the extent the professional employer organization has assumed responsibility in the professional employer agreement, make payments for employee benefits for covered employees;

(3) The professional employer organization shall retain the authority to hire, terminate, and discipline the covered employees unless otherwise agreed; and

(4)(A) The responsibility to obtain workers' compensation coverage for covered employees from a carrier licensed to do business in Arkansas and otherwise in compliance with all applicable requirements shall be specifically allocated to either the client or the professional employer organization.

(B)(i) If the responsibility under subdivision (c)(4)(A) of this section is allocated to the professional employer organization under a professional employer agreement, the professional employer agreement shall require the professional employer organization to maintain records regarding the premium and loss experience related to workers' compensation insurance provided to covered employees under the professional employer agreement.

(ii) The professional employer agreement shall also provide that, if requested by the client at or after the termination of the professional employer agreement, the professional employer organization shall provide the records maintained under subdivision (c)(4)(B)(i) of this section to the client.

(C) If the professional employer organization or any of its controlling persons cannot provide the information requested under subdivision (c)(4)(B)(ii) of this section, any insurance carrier that provided the coverage for the covered employees shall provide it upon request of the client or the Insurance Commissioner.

(5)(A) Upon request, during the period the client is a party to a professional employer organization arrangement and for a period of ninety (90) days after termination of a professional employer organi-

zation arrangement, a client or former client is entitled to receive records of the professional employer organization regarding payroll, workers' compensation coverage, losses and claims, and employee benefits provided under the professional employer organization arrangement.

(B)(i) The professional employer organization may charge a reasonable fee for the cost of reproducing the information under subdivision (c)(5)(A) of this section.

(ii) This section does not require the disclosure of information to a client or former client concerning another client or former client of the professional employer organization.

(C) Either the professional employer organization or the controlling person, to the extent the controlling person has access to the information, shall furnish the information requested within thirty (30) days of receiving the request.

(d) With respect to each professional employer agreement entered into by a professional employer organization, each professional employer organization shall provide written notice to each covered employee affected by the professional employer agreement of the general nature of the coemployment relationship between and among the professional employer organization, the client, and any covered employee.

(e)(1) A professional employer organization shall provide to a client within fifteen (15) days of receipt of a written request a record of wages by workers' compensation class code and claims loss runs for the lesser of the prior thirty-six (36) calendar months or the period of time the professional employer agreement between the client and professional employer organization has been effective.

(2) If a professional employer organization fails to provide the information in subdivision (e)(1) of this section and if the commissioner requests no later than ninety (90) days after the termination of the policy covering the client, the insurer providing the coverage shall provide to the client within thirty (30) days the information or as much information as the insurer possesses or should possess if the insurer has complied with applicable law.

(f)(1) Either a client or a professional employer organization may sponsor retirement and welfare benefit plans for its covered employees.

(2) If limited to the employees of the professional employer organization, a welfare benefit plan offered to the covered employees of a single professional employer organization shall not be considered a multiple employer welfare arrangement or trust within the meaning of applicable law.

(3) For purposes of § 23-86-201 et seq., with respect to a health benefit plan sponsored by a professional employer organization:

(A) A professional employer organization shall be considered the employer of all of its covered employees; and

(B) All covered employees of one (1) or more clients participating in a health benefit plan sponsored by a single professional employer

organization shall be considered employees of the professional employer organization.

(4) If a professional employer organization offers to its covered employees any health benefit plan that is not fully insured by an authorized insurer, the plan shall:

(A) Utilize a third-party administrator licensed to do business in this state;

(B) Hold all plan assets, including participant contributions, in a trust account; and

(C) Provide sound reserves for the plan as determined using generally accepted actuarial standards.

(g) Except to the extent otherwise provided in a professional employer agreement:

(1) A professional employer organization shall not be liable for the acts, errors, or omissions of a client or of any covered employee when the covered employee is acting under the direction and control of a client;

(2) A client shall not be liable for the acts, errors, or omissions of a professional employer organization or of any covered employee of the client and a professional employer organization when the covered employee is acting under the direction and control of the professional employer organization;

(3) This subsection does not limit any contractual liability or obligation specifically provided in a professional employer agreement or the liabilities and obligations of any professional employer organization or client as defined elsewhere in this subchapter; and

(4) A covered employee is not, solely as the result of being a covered employee of a professional employer organization, an employee of the professional employer organization for purposes of general liability, insurance, fidelity bonds, surety bonds, or employer's liability not covered by workers' compensation carried by the professional employer organization unless the covered employees are included by specific reference in the professional employer agreement and applicable pre-arranged employment contract, insurance contract, or bond.

(h) Except as provided under § 23-92-411, the sale of professional employer services provided by professional employer organizations licensed under this subchapter shall not constitute the sale of insurance for purposes of Arkansas insurance law.

(i) Covered employees whose services are subject to sales tax shall be deemed the employees of the client for purposes of collecting and levying sales tax on the services performed by the covered employee.

(j) A licensed professional employer organization shall be deemed an employer of the covered employees and shall perform the following employer responsibilities in conformity with all applicable federal and state laws, rules, and regulations to:

(1) Pay wages and collect, report, and pay employment taxes from its own accounts;

(2) Pay unemployment taxes as required by the Division of Workforce Services Law, § 11-10-101 et seq.;

(3)(A) Ensure that all covered employees are covered by workers' compensation insurance provided in conformance with the laws of this state.

(B) Workers' compensation coverage may be provided through a policy or plan maintained by either the professional employer organization or the client.

(C) However, for purposes of risks insured under the Arkansas Workers' Compensation Insurance Plan, § 23-67-301 et seq., the commissioner is authorized to promulgate rules as he or she deems necessary to assure that workers' compensation coverage is available to employees providing services for a client;

(4) Be entitled and to entitle the client, together as joint employers, to the exclusive remedy under § 11-9-105, under both the workers' compensation and employer's liability provisions of a workers' compensation policy or plan that either party has secured within the meaning of § 11-9-105; and

(5)(A) Not be vicariously liable for the liabilities of the client, whether contractual or otherwise.

(B) However, the client shall not be vicariously liable for the liabilities of the professional employer organization, whether contractual or otherwise.

(C) This section shall limit any direct contractual liability or any joint liability between the client and the professional employer organization.

History. Acts 2003, No. 1750, § 1; 2019, No. 315, § 2776; 2019, No. 910, §§ 607, 608.

Amendments. The 2019 amendment by No. 315 inserted "rules" in the introductory language of (j); and deleted "and regulations" following "rules" in (j)(3)(C).

The 2019 amendment by No. 910 substituted "Division of Workforce Services Law" for "Department of Workforce Services Law" in (j)(2).

23-92-410. Issuance, refusal, suspension, or revocation of license — Grounds and procedure.

(a) The Insurance Commissioner shall issue a license as a professional employer organization to any person who qualifies for the license under the terms of this subchapter.

(b) In addition, the commissioner may refuse to issue a license to any person, may suspend or revoke the license of any professional employer organization, or impose administrative fines as provided for in this subchapter when the commissioner finds:

(1) That the licensee or applicant has violated any of the provisions of this subchapter, the rules or other orders lawfully promulgated by the commissioner, or the conditions of financial assurances required by this subchapter;

(2) That the licensee or applicant has engaged in a fraudulent, deceptive, or dishonest practice; or

(3) For good and sufficient cause, that the licensee or applicant is unfit to be a professional employer organization within the meaning of this subchapter or of any of the rules or orders lawfully promulgated by the commissioner.

(c) The commissioner may not refuse to issue a license or suspend or revoke a license unless he or she furnishes the professional employer organization with a written statement of the charges against it and affords it an opportunity to be heard on the charges.

History. Acts 2003, No. 1750, § 1; deleted “and regulations” following “rules”
2019, No. 315, § 2777. in (b)(1) and (b)(3).

Amendments. The 2019 amendment

23-92-412. Penalties.

(a) Any person who engages in the business of a professional employer organization or acts as a professional employer organization without first procuring a license or who otherwise violates any of the provisions under this subchapter shall be liable for a civil penalty of not less than two hundred fifty dollars (\$250) nor more than five thousand dollars (\$5,000) for each day that it engages in the business of providing professional employer services without a license.

(b)(1) Any person who violates any of the provisions under this subchapter or who violates any rules promulgated by the Insurance Commissioner under this subchapter shall be liable for a civil penalty for each offense of not less than two hundred fifty dollars (\$250) nor more than five thousand dollars (\$5,000) for each violation.

(2) For any violation affecting two (2) or more employees covered by a professional employer organization agreement, the fine shall be multiplied by the number of employees affected by the violation.

(c) The commissioner shall have the statutory power to enjoin or restrain by bringing an action in the Pulaski County Circuit Court against any person who engages in the business of or acts as a professional employer organization without having first procured a license for engaging in the business of a professional employer organization or acting as a professional employer organization.

History. Acts 2003, No. 1750, § 1; deleted “or regulations” following “rules”
2019, No. 315, § 2778. in (b)(1).

Amendments. The 2019 amendment

23-92-413. Nondisclosure of proprietary information.

(a)(1) Professional employer organizations and professional employer organization groups are required under this subchapter to file with the Insurance Commissioner certain proprietary material, including financial records and financial information and client lists, the disclosure of which would give advantage to competitors.

(2)(A) The commissioner shall not consider proprietary material under this subchapter to be subject to mandatory disclosure under § 25-19-105(b)(9)(A).

(B) If litigation or any other proceedings are instituted to compel disclosure, the total expense of the proceedings shall be paid by the professional employer organization or professional employer organization group whose proprietary material is being sought.

(C) The commissioner shall give notice in writing to any professional employer organization or professional employer organization group whose client lists or other material that the commissioner deems to be proprietary are being sought under the Freedom of Information Act of 1967, § 25-19-101 et seq.

(b) Notwithstanding subsection (a) of this section or any other law governing disclosure of confidential information, the commissioner, the Director of the Division of Workforce Services, and the Workers' Compensation Commission may exchange information among themselves for the purposes of regulating professional employer organizations.

History. Acts 2003, No. 1750, § 1; substituted "Division of Workforce Services" for "Department of Workforce Services" in (b).

Amendments. The 2019 amendment

23-92-414. Employer service assurance organization affidavit.

(a) The Insurance Commissioner may provide by rule for the acceptance of an employer service assurance organization affidavit provided on behalf of a professional employer organization in lieu of the requirements under §§ 23-92-404 — 23-92-406 and 23-92-408 and the fees provided for in § 23-92-407.

(b) The fee for filing an employer service assurance organization affidavit shall be five hundred dollars (\$500) for initial licensure and five hundred dollars (\$500) for each biennial renewal.

History. Acts 2003, No. 1750, § 1; deleted "and regulation" following "rule" in (a).

Amendments. The 2019 amendment

23-92-419. Rules.

(a)(1) The Insurance Commissioner may prescribe rules for the conduct of the business of professional employer organizations needed to implement this subchapter.

(2) The commissioner shall adopt rules under this subchapter in compliance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(b)(1) The commissioner may adopt reasonable rules for use by employer service assurance organizations to record and report to the commissioner information determined by the commissioner to be nec-

essary or appropriate for the administration of this subchapter and for the effectuation of its purposes.

(2) The commissioner may designate one (1) or more employer service assurance organizations to assist him or her in gathering, compiling, and reporting the information.

History. Acts 2003, No. 1750, § 1; 2019, No. 315, § 2780.

deleted “and regulations” following “rules” in the section heading, in (a)(1), and in (a)(2).

Amendments. The 2019 amendment

SUBCHAPTER 5 — ARKANSAS PHARMACY BENEFITS MANAGER LICENSURE ACT

SECTION.

- 23-92-501. Title.
- 23-92-502. Purpose.
- 23-92-503. Definitions.
- 23-92-504. License to do business — Application — Fees — Rules.
- 23-92-505. Pharmacy benefits manager network adequacy.

SECTION.

- 23-92-506. Compensation — Prohibited practices.
- 23-92-507. Gag clauses prohibited.
- 23-92-508. Enforcement.
- 23-92-509. Rules.
- 23-92-510. Applicability.

Effective Dates. Acts 2018 (2nd Ex. Sess.), No. 1, § 7; Mar. 15, 2018, §§ 1, 2, 3, and 5. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the unregulated behavior of pharmacy benefits managers is threatening the sustainability of pharmacies in Arkansas; that regulation of pharmacy benefits managers by the State Insurance Department will stabilize the pharmacy industry in this state; and that Section 1, 2, 3, and 5 of this act are immediately necessary to ensure that Arkansas residents have continued access to pharmacy services across the state. Therefore, an emergency is declared to exist, and Sections 1, 2, 3, and 5 of this act, being immediately necessary for the preservation of the public peace, health, and safety, shall become effective on: (1) The date of the act’s approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2018 (2nd Ex. Sess.), No. 3, § 7; Mar. 19, 2018, §§ 1, 2, 3, and 5. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the unregulated behavior of pharmacy benefits managers is threatening the sustainability of pharmacies in Arkansas; that regulation of pharmacy benefits managers by the State Insurance Department will stabilize the pharmacy industry in this state; and that Section 1, 2, 3, and 5 of this act are immediately necessary to ensure that Arkansas residents have continued access to pharmacy services across the state. Therefore, an emergency is declared to exist, and Sections 1, 2, 3, and 5 of this act, being immediately necessary for the preservation of the public peace, health, and safety, shall become effective on: (1) The date of the act’s approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

23-92-501. Title.

This subchapter shall be known and may be cited as the “Arkansas Pharmacy Benefits Manager Licensure Act”.

History. Acts 2018 (2nd Ex. Sess.), No. 1, § 1; 2018 (2nd Ex. Sess.), No. 3, § 1.

23-92-502. Purpose.

(a) This subchapter establishes the standards and criteria for the regulation and licensure of pharmacy benefits managers providing claims processing services or other prescription drug or device services for health benefit plans.

(b) The purpose of this subchapter is to:

(1) Promote, preserve, and protect the public health, safety, and welfare through effective regulation and licensure of pharmacy benefits managers;

(2) Provide for powers and duties of the Insurance Commissioner, the State Insurance Department, and other state agencies and officers; and

(3) Prescribe penalties and fines for violations of this subchapter.

History. Acts 2018 (2nd Ex. Sess.), No. 1, § 1; 2018 (2nd Ex. Sess.), No. 3, § 1.

23-92-503. Definitions.

As used in this subchapter:

(1) “Claims processing services” means the administrative services performed in connection with the processing and adjudicating of claims relating to pharmacist services that include:

(A) Receiving payments for pharmacist services;

(B) Making payments to pharmacists or pharmacies for pharmacist services; or

(C) Both subdivisions (1)(A) and (B) of this section;

(2)(A) “Health benefit plan” means any individual, blanket, or group plan, policy, or contract for healthcare services issued or delivered by a healthcare insurer in this state.

(B) “Health benefit plan” does not include:

(i) Accident-only plans;

(ii) Specified disease plans;

(iii) Disability income plans;

(iv) Plans that provide only for indemnity for hospital confinement;

(v) Long-term care only plans that do not include pharmacy benefits;

(vi) Other limited-benefit health insurance policies or plans; or

(vii) Health benefit plans provided under Arkansas Constitution, Article 5, § 32, the Workers’ Compensation Law, § 11-9-101 et seq., and the Public Employee Workers’ Compensation Act, § 21-5-601 et seq.;

(3) "Healthcare insurer" means an insurance company, a health maintenance organization, or a hospital and medical service corporation;

(4) "Other prescription drug or device services" means services other than claims processing services, provided directly or indirectly, whether in connection with or separate from claims processing services, including without limitation:

(A) Negotiating rebates, discounts, or other financial incentives and arrangements with drug companies;

(B) Disbursing or distributing rebates;

(C) Managing or participating in incentive programs or arrangements for pharmacist services;

(D) Negotiating or entering into contractual arrangements with pharmacists or pharmacies, or both;

(E) Developing formularies;

(F) Designing prescription benefit programs; or

(G) Advertising or promoting services;

(5) "Pharmacist" means an individual licensed as a pharmacist by the Arkansas State Board of Pharmacy;

(6) "Pharmacist services" means products, goods, and services, or any combination of products, goods, and services, provided as a part of the practice of pharmacy as defined in § 17-92-101;

(7) "Pharmacy" means the same as defined in § 17-92-101;

(8)(A) "Pharmacy benefits manager" means a person, business, or entity, including a wholly or partially owned or controlled subsidiary of a pharmacy benefits manager, that provides claims processing services or other prescription drug or device services, or both, for health benefit plans.

(B) "Pharmacy benefits manager" does not include any:

(i) Healthcare facility licensed in Arkansas;

(ii) Healthcare professional licensed in Arkansas;

(iii) Consultant who only provides advice as to the selection or performance of a pharmacy benefits manager; or

(iv) Entity that provides claims processing services or other prescription drug or device services for the fee-for-service Arkansas Medicaid Program only in that capacity;

(9) "Pharmacy benefits manager affiliate" means a pharmacy or pharmacist that directly or indirectly, through one (1) or more intermediaries, owns or controls, is owned or controlled by, or is under common ownership or control with a pharmacy benefits manager;

(10) "Pharmacy benefits manager network" means a network of pharmacists or pharmacies that are offered by an agreement or insurance contract to provide pharmacist services for health benefit plans;

(11) "Pharmacy benefits plan or program" means a plan or program that pays for, reimburses, covers the cost of, or otherwise provides for pharmacist services under a health benefit plan;

(12) "Pharmacy services administrative organization" means an organization that helps community pharmacies and pharmacy benefits

managers or third-party payers achieve administrative efficiencies, including contracting and payment efficiencies;

(13)(A) “Rebate” means a discount or other price concession, or a payment that is:

(i) Based on utilization of a prescription drug; and

(ii) Paid by a manufacturer or third party, directly or indirectly, to a pharmacy benefits manager, pharmacy services administrative organization, or pharmacy after a claim has been processed and paid at a pharmacy.

(B) “Rebate” includes without limitation incentives, disbursements, and reasonable estimates of a volume-based discount;

(14) “Spread pricing” means the model of prescription drug pricing in which the pharmacy benefits manager charges a health benefit plan a contracted price for prescription drugs, and the contracted price for the prescription drugs differs from the amount the pharmacy benefits manager directly or indirectly pays the pharmacist or pharmacy for pharmacist services; and

(15) “Third party” means a person, business, or entity other than a pharmacy benefits manager that is not an enrollee or insured in a health benefit plan.

History. Acts 2018 (2nd Ex. Sess.), No. 1, § 1; 2018 (2nd Ex. Sess.), No. 3, § 1; 2019, No. 994, §§ 6, 7.

Amendments. The 2019 amendment added “or a payment that is” in (13)(A); added the (13)(A)(i) and (13)(A)(ii) designations; substituted “Paid” for “that is paid” in (13)(A)(ii); added the definition for “Spread pricing”; and made stylistic changes.

23-92-504. License to do business — Application — Fees — Rules.

(a)(1) A person or organization shall not establish or operate as a pharmacy benefits manager in Arkansas for health benefit plans without obtaining a license from the Insurance Commissioner under this subchapter.

(2) The commissioner shall prescribe the application for a license to operate in Arkansas as a pharmacy benefits manager and may charge application fees and renewal fees as established by rule.

(b)(1) The commissioner shall issue rules establishing the licensing, fees, application, financial standards, and reporting requirements of pharmacy benefits managers under this subchapter.

(2)(A) When adopting the initial rules to implement this subchapter, the final rule shall be filed with the Secretary of State for adoption under § 25-15-204(f):

(i) On or before September 1, 2018; or

(ii) If approval under § 10-3-309 has not occurred by September 1, 2018, as soon as practicable after approval under § 10-3-309.

(B) The State Insurance Department shall file the proposed rule with the Legislative Council under § 10-3-309(c) sufficiently in advance of September 1, 2018, so that the Legislative Council may consider the rule for approval before September 1, 2018.

History. Acts 2018 (2nd Ex. Sess.), No. 1, § 1; 2018 (2nd Ex. Sess.), No. 3, § 1.

23-92-505. Pharmacy benefits manager network adequacy.

- (a) A pharmacy benefits manager shall provide:
 - (1)(A) A reasonably adequate and accessible pharmacy benefits manager network for the provision of prescription drugs for a health benefit plan that shall provide for convenient patient access to pharmacies within a reasonable distance from a patient's residence.
 - (B) A mail-order pharmacy shall not be included in the calculations determining pharmacy benefits manager network adequacy; and
 - (2) A pharmacy benefits manager network adequacy report describing the pharmacy benefits manager network and the pharmacy benefits manager network's accessibility in this state in the time and manner required by rule issued by the State Insurance Department.
- (b)(1) A pharmacy benefits manager shall report to the Insurance Commissioner on a quarterly basis for each healthcare insurer the following information:
 - (A) The aggregate amount of rebates received by the pharmacy benefits manager;
 - (B) The aggregate amount of rebates distributed to the appropriate healthcare insurer;
 - (C) The aggregate amount of rebates passed on to the enrollees of each healthcare insurer at the point of sale that reduced the enrollees' applicable deductible, copayment, coinsurance, or other cost-sharing amount;
 - (D) The individual and aggregate amount paid by the healthcare insurer to the pharmacy benefits manager for pharmacist services itemized by pharmacy, by product, and by goods and services; and
 - (E) The individual and aggregate amount a pharmacy benefits manager paid for pharmacist services itemized by pharmacy, by product, and by goods and services.
- (2) The report required under subdivision (b)(1) of this section is:
 - (A) Proprietary and confidential under § 23-61-107(a)(4) and § 23-61-207; and
 - (B) Not subject to the Freedom of Information Act of 1967, § 25-19-101 et seq.
- (c) A pharmacy benefits manager is prohibited from conducting spread pricing in this state.

History. Acts 2018 (2nd Ex. Sess.), No. 1, § 1; 2018 (2nd Ex. Sess.), No. 3, § 1; 2019, No. 994, § 8.

Amendments. The 2019 amendment added the (a) designation; and added (b) and (c).

23-92-506. Compensation — Prohibited practices.

- (a)(1) The Insurance Commissioner may review and approve the compensation program of a pharmacy benefits manager with a health

benefit plan to ensure that the reimbursement for pharmacist services paid to a pharmacist or pharmacy is fair and reasonable to provide an adequate pharmacy benefits manager network for a health benefit plan under the standards issued by rule of the State Insurance Department.

(2) All information and data acquired during the review under subdivision (a)(1) of this section is:

(A) Considered proprietary and confidential under § 23-61-107(a)(4) and § 23-61-207; and

(B) Not subject to the Freedom of Information Act of 1967, § 25-19-101 et seq.

(b) A pharmacy benefits manager or representative of a pharmacy benefits manager shall not:

(1) Cause or knowingly permit the use of any advertisement, promotion, solicitation, representation, proposal, or offer that is untrue, deceptive, or misleading;

(2) Unless reviewed and approved by the commissioner, charge a pharmacist or pharmacy a fee related to the adjudication of a claim, including without limitation a fee for:

(A) The receipt and processing of a pharmacy claim;

(B) The development or management of claims processing services in a pharmacy benefits manager network; or

(C) Participation in a pharmacy benefits manager network;

(3) Unless reviewed and approved by the commissioner in coordination with the Arkansas State Board of Pharmacy, require pharmacy accreditation standards or certification requirements inconsistent with, more stringent than, or in addition to requirements of the board;

(4)(A) Reimburse a pharmacy or pharmacist in the state an amount less than the amount that the pharmacy benefits manager reimburses a pharmacy benefits manager affiliate for providing the same pharmacist services.

(B) The amount shall be calculated on a per-unit basis using the same generic product identifier or generic code number;

(5)(A) Pay or reimburse a pharmacy or pharmacist for the ingredient drug product component of pharmacist services less than the national average drug acquisition cost or, if the national average drug acquisition cost is unavailable, the wholesale acquisition cost.

(B)(i) The Employee Benefits Division community pharmacy reimbursement model for pharmacist services in partnership with the University of Arkansas for Medical Sciences-based prescription drug program satisfies the intent of this subdivision (b)(5).

(ii) A plan using the model described in subdivision (b)(5)(B)(i) of this section is exempt from complying with subdivision (b)(5)(A) of this section if the reimbursement model is maintained as determined by the Insurance Commissioner.

(iii) If a plan deviates from this reimbursement model, the plan shall be subject to subdivision (b)(5)(A) of this section;

(6) Make or permit any reduction of payment for pharmacist services by a pharmacy benefits manager or a healthcare insurer directly or

indirectly to a pharmacy under a reconciliation process to an effective rate of reimbursement, including without limitation generic effective rates, brand effective rates, direct and indirect remuneration fees, or any other reduction or aggregate reduction of payment; or

(7) Do any combination of the actions listed in subdivisions (b)(1)-(6) of this section.

(c) A claim or aggregate of claims for pharmacist services shall not be directly or indirectly retroactively denied or reduced after adjudication of the claim or aggregate of claims unless:

(1) The original claim was submitted fraudulently;

(2) The original claim payment was incorrect because the pharmacy or pharmacist had already been paid for the pharmacist services; or

(3) The pharmacist services were not properly rendered by the pharmacy or pharmacist.

(d) Termination of a pharmacy or pharmacist from a pharmacy benefits manager network shall not release the pharmacy benefits manager from the obligation to make any payment due to the pharmacy or pharmacist for pharmacist services properly rendered.

(e) The commissioner may issue a rule establishing prohibited practices of pharmacy benefits managers providing claims processing services or other prescription drug or device services for health benefit plans.

History. Acts 2018 (2nd Ex. Sess.), No. 1, § 1; 2018 (2nd Ex. Sess.), No. 3, § 1; 2019, No. 994, §§ 9, 10.

Amendments. The 2019 amendment added the (b)(5)(A) and (b)(5)(B) designations; added (b)(6); added the (b)(7) designation;

substituted “subdivisions (b)(1)-(6)” for “subdivisions (b)(1)-(4)” in (b)(7); and, in the introductory language of (c), inserted “or aggregate of claims” twice and inserted “directly or indirectly”.

23-92-507. Gag clauses prohibited.

(a) The prohibitions under § 23-99-407 apply to participation contracts between pharmacy benefits managers and pharmacists or pharmacies providing prescription drug coverage for health benefit plans.

(b) A pharmacy or pharmacist may provide to an insured information regarding the insured’s total cost for pharmacist services for a prescription drug.

(c) A pharmacy or pharmacist shall not be proscribed by a pharmacy benefits manager from discussing information regarding the total cost for pharmacist services for a prescription drug or from selling a more affordable alternative to the insured if a more affordable alternative is available.

(d) A pharmacy benefits manager contract with a participating pharmacist or pharmacy shall not prohibit, restrict, or limit disclosure of information to the Insurance Commissioner, law enforcement, or state and federal governmental officials investigating or examining a complaint or conducting a review of a pharmacy benefits manager’s compliance with the requirements under this subchapter.

(e) Without limiting its application to any other plan or program, this section applies to an organization or entity directly or indirectly providing services to patients under the Medicaid Provider-Led Organized Care Act, § 20-77-2701 et seq., or any other Medicaid-managed care program operating in this state.

History. Acts 2018 (2nd Ex. Sess.), No. 1, § 1; 2018 (2nd Ex. Sess.), No. 3, § 1; 2019, No. 994, § 11.
Amendments. The 2019 amendment added (e).

23-92-508. Enforcement.

(a) The Insurance Commissioner shall enforce this subchapter.

(b)(1) The commissioner may examine or audit the books and records of a pharmacy benefits manager providing claims processing services or other prescription drug or device services for a health benefit plan to determine if the pharmacy benefits manager is in compliance with this subchapter.

(2) The information or data acquired during an examination under subdivision (b)(1) of this section is:

(A) Considered proprietary and confidential under § 23-61-107(a)(4) and § 23-61-207; and

(B) Not subject to the Freedom of Information Act of 1967, § 25-19-101 et seq.

History. Acts 2018 (2nd Ex. Sess.), No. 1, § 1; 2018 (2nd Ex. Sess.), No. 3, § 1.

23-92-509. Rules.

(a)(1) The Insurance Commissioner may adopt rules regulating pharmacy benefits managers that are not inconsistent with this subchapter.

(2) Rules that the commissioner may adopt under this subchapter include without limitation rules relating to:

(A) Licensing;

(B) Application fees;

(C) Financial solvency requirements;

(D) Pharmacy benefits manager network adequacy;

(E) Prohibited market conduct practices;

(F) Data reporting requirements under § 4-88-803;

(G) Compliance and enforcement requirements under § 17-92-507 concerning Maximum Allowable Cost Lists;

(H) Rebates;

(I) Compensation; and

(J) Lists of health benefit plans administered by a pharmacy benefits manager in this state.

(b) Rules adopted under this subchapter shall set penalties or fines, including without limitation monetary fines, suspension of licensure,

and revocation of licensure for violations of this subchapter and rules adopted under this subchapter.

(c)(1) In addition to the filing requirements under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and under § 10-3-309, the State Insurance Department shall file a proposed rule or a proposed amendment to an existing rule under this subchapter with the Senate Committee on Insurance and Commerce and the House Committee on Insurance and Commerce at least thirty (30) days before the expiration of the period for public comment under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(2) The Senate Committee on Insurance and Commerce and the House Committee on Insurance and Commerce shall review the proposed rule or proposed amendment to an existing rule within forty-five (45) days of the date the proposed rule or proposed amendment to an existing rule is filed with the Senate Committee on Insurance and Commerce and the House Committee on Insurance and Commerce.

(3)(A) If the department adopts an emergency rule under this subchapter, in addition to the filing requirements under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and under § 10-3-309, the department shall notify the following individuals of the emergency rule and provide each individual with a copy of the rule within five (5) business days of adopting the rule:

- (i) The Speaker of the House of Representatives;
- (ii) The President Pro Tempore of the Senate;
- (iii) The Chair of the Senate Committee on Insurance and Commerce; and
- (iv) The Chair of the House Committee on Insurance and Commerce.

(B) The Senate Committee on Insurance and Commerce and the House Committee on Insurance and Commerce shall review the emergency rule within forty-five (45) days of the date that the emergency rule is provided to the Chair of the Senate Committee on Insurance and Commerce and the Chair of the House Committee on Insurance and Commerce.

History. Acts 2018 (2nd Ex. Sess.), No. 1, § 1; 2018 (2nd Ex. Sess.), No. 3, § 1.

23-92-510. Applicability.

(a) This subchapter is applicable to a contract or health benefit plan issued, renewed, recredentialled, amended, or extended on and after September 1, 2018.

(b) A contract existing on the date of licensure of the pharmacy benefits manager shall comply with the requirements of this subchapter as a condition of licensure for the pharmacy benefits manager.

(c) Without limiting its application to any other plan or program, this section applies to an organization or entity directly or indirectly providing services to patients under the Medicaid Provider-Led Orga-

nized Care Act, § 20-77-2701 et seq., or any other Medicaid-managed care program operating in this state.

History. Acts 2018 (2nd Ex. Sess.), No. 1, § 1; 2018 (2nd Ex. Sess.), No. 3, § 1; 2019, No. 994, § 12.
Amendments. The 2019 amendment added (c).

CHAPTER 93

CONTINUING CARE PROVIDERS

SUBCHAPTER.

1. CONTINUING CARE PROVIDER REGULATION ACT.
2. LICENSING.

SUBCHAPTER 1 — CONTINUING CARE PROVIDER REGULATION ACT

SECTION.

23-93-105. Rules.

23-93-108. Continuing care contracts —
Minimum requirements.

23-93-105. Rules.

The Insurance Commissioner shall have the authority to adopt, amend, or repeal such rules as are reasonably necessary for the enforcement of the provisions of this subchapter.

History. Acts 1987, No. 329, § 13; 2019, No. 315, § 2781. deleted “and regulations” following “rules” in the section heading and in the text.

Amendments. The 2019 amendment

23-93-108. Continuing care contracts — Minimum requirements.

(a) A continuing care contract shall be written in clear and understandable language.

(b) A continuing care contract shall, at a minimum:

(1) Describe the facility’s admission policies, including age, health status, and minimum financial requirements, if any;

(2) Describe the health and financial conditions required for a person to continue to be a resident;

(3) Describe the circumstances under which the resident will be permitted to remain in the facility in the event of possible financial difficulties of the resident;

(4)(A) List the total consideration paid, including donations, entrance fee, subscription fees, periodic fees, and other fees paid or payable.

(B) However, a provider cannot require a resident to transfer all his or her assets to the provider or community as a condition for providing continuing care, and the provider shall reserve his or her rights to charge periodic fees;

(5) Describe in detail all items of service to be received by the resident such as food, shelter, medical care, nursing care, personal care services, and other health services and the time period during which such services will be provided;

(6) Provide, as an addendum to the contract, a description of items of service, if any, which are available to the resident but which are not covered in the entrance or monthly fee;

(7) Specify taxes and utilities, if any, that the resident must pay;

(8) Specify that deposits or entrance fees paid by or for a resident shall be held in trust in a cash escrow pursuant to this subchapter;

(9) State the terms under which a continuing care contract may be cancelled by the resident or the provider and the basis for establishing the amount of refund of the entrance fee, if any;

(10) State the terms under which a continuing care contract is cancelled by the death of the resident and the basis for establishing the amount of refund, if any, of the entrance fee;

(11) State when fees will be subject to periodic increases and what the policy for increases will be;

(12) State the entrance fee and periodic fees that will be charged if the resident marries while living in the facility, the terms concerning the entry of a spouse to the facility, and the consequences if the spouse does not meet the requirements for entry;

(13) State the rules of the provider then in effect and state the circumstances under which the provider claims to be entitled to have access to the resident's unit;

(14) List the resident's and provider's respective rights and obligations as to any real or personal property of the resident transferred to or placed in the custody of the provider;

(15) Describe the living quarters purchased by or assigned to the resident;

(16) Provide under what conditions, if any, the resident may assign the use of a unit to another;

(17) Include the policy and procedure with regard to changes in accommodations due to an increase or decrease in the number of persons occupying an individual unit;

(18) State the conditions upon which the facility may sublet or relet a resident's unit;

(19) State what fee adjustments, if any, will be made in the event of voluntary absence from the facility for an extended period of time by the resident;

(20) Include the procedures to be followed when the provider temporarily or permanently changes the resident's accommodations, either within the facility or by transfer to a health facility;

(21) If the facility includes a nursing facility, describe the admissions policies and what will occur if a nursing facility bed is not available at the time it is needed;

(22) If the resident is offered a priority for nursing facility admission at a facility that is not owned by the continuing care facility, describe

with which nursing facility the formal arrangement is made and what will occur if a nursing facility bed is not available at the time it is needed;

(23) Include the policy and procedures for determining under what circumstances a resident will be considered incapable of independent living and will require a permanent move to a nursing facility;

(24) Specify the types of insurance, if any, the resident must maintain, including Medicare, other health insurance, and property insurance;

(25) Specify the circumstances, if any, under which the resident will be required to apply for Medicaid, public assistance, or any other public benefit programs;

(26) State that the provider has filed a disclosure statement with the department and state the contents of the disclosure statement required by § 23-93-106(a)(3); and

(27) State, in bold and conspicuous type, the following:

“THIS CONTRACT IS GOVERNED BY THE CONTINUING CARE PROVIDER REGULATION ACT. THE PROVIDER HAS FILED A DISCLOSURE DOCUMENT WITH THE INSURANCE COMMISSIONER OF THE STATE OF ARKANSAS PRIOR TO OFFERING THIS CONTRACT. THE INSURANCE COMMISSIONER HAS NOT PASSED UPON THE VALIDITY OF THE INFORMATION FILED BY THE PROVIDER, DOES NOT MAKE ANY RECOMMENDATION WITH RESPECT TO THE FAIRNESS OF THE CHARGES MADE BY THE PROVIDER, HAS NOT CONDUCTED AN INDEPENDENT REVIEW OF THE FINANCIAL STRENGTH OF THE PROVIDER AND DOES NOT WARRANT THE ENFORCEABILITY OF ANY CONTRACT OFFERED BY THE PROVIDER. NO PROSPECTIVE RESIDENT SHOULD RELY UPON THE FACT THAT A FILING HAS BEEN MADE WITH THE COMMISSIONER IN MAKING THEIR DECISION. EACH PROSPECTIVE RESIDENT SHOULD CONSULT HIS OWN LEGAL AND FINANCIAL ADVISERS PRIOR TO ENTERING INTO ANY CONTRACT WITH THE PROVIDER.”

History. Acts 1987, No. 329, § 5; 2019, No. 315, § 2782. deleted “and regulations” following “rules” in (b)(13).

Amendments. The 2019 amendment

SUBCHAPTER 2 — LICENSING

SECTION.

23-93-202. Continuing Care Provider Regulation Act — Applicability.

SECTION.

23-93-205. Violations.

23-93-202. Continuing Care Provider Regulation Act — Applicability.

(a) In addition to this subchapter, a life care provider is subject to the Continuing Care Provider Regulation Act, § 23-93-101 et seq.

(b)(1) A life care provider shall not be established, conducted, or maintained in this state without obtaining a license from the Insurance Commissioner.

(2) However, a life care provider established before August 13, 1993, shall be licensed without application or payment of a fee.

(c)(1) A life care provider shall include at least one (1) resident of the continuing care community who is nominated by the residents as a voting member of the life care provider's governing body.

(2) A resident member shall perform his or her duties in a manner that complies with the standards of conduct and fiduciary duties of the members of the governing board of the life care provider.

History. Acts 1993, No. 787, §§ 2, 3; 2019, No. 777, § 1. “No”, and inserted “not”; substituted “a life care provider established before” for

Amendments. The 2019 amendment rewrote (a); added the (b)(1) and (b)(2) designations; in (b)(1), substituted “A” for (b)(2); and added (c). “life care providers established prior to” in

23-93-205. Violations.

(a) The license of a provider shall remain in effect until revoked after notice and hearing upon written finding of fact by the State Insurance Department that the provider has:

(1) Willfully violated any provision of this subchapter, or any rule promulgated under this subchapter;

(2) Failed to file an annual disclosure statement or standard form of contract as required by the Continuing Care Provider Regulation Act, § 23-93-101 et seq.;

(3) Delivered to a prospective resident a disclosure statement that makes an untrue statement or omits a material fact, and the provider, at the time of the delivery of the disclosure statement, had actual knowledge of the misstatement or omission;

(4) Failed to comply with the terms of a cease and desist order issued pursuant to § 23-93-104; or

(5) Has been determined by the department to be in a hazardous financial condition.

(b) Findings of fact in support of revocation shall be accompanied by an explicit statement of the underlying facts supporting the finding.

History. Acts 1993, No. 787, § 8; 2019, No. 315, § 2783. substituted “rule” for “regulation” in (a)(1).

Amendments. The 2019 amendment

CHAPTER 94
LIABILITY RISK RETENTION

SUBCHAPTER.

2. RISK RETENTION AND PURCHASING GROUPS ACT.

SUBCHAPTER 2 — RISK RETENTION AND PURCHASING GROUPS ACT

SECTION.

- 23-94-204. Domestic risk retention groups — Definitions.
23-94-205. Foreign risk retention groups.
23-94-208. Notice and registration requirements of purchasing groups.

SECTION.

- 23-94-209. Restrictions on insurance purchased by purchasing groups.
23-94-215. Rules.

23-94-204. Domestic risk retention groups — Definitions.

(a)(1) To be organized as a risk retention group in this state, the risk retention group must be organized and licensed to write only casualty insurance pursuant to this subchapter and, except as provided elsewhere in this subchapter, must comply with all of the laws, rules, and requirements applicable to such insurers licensed in this state and with § 23-94-205 to the extent such requirements are not a limitation on laws, rules, or requirements of this state. The commissioner shall issue a certificate of registration to a risk retention group organized, formed, or domiciled under the laws of this state when the commissioner is satisfied that the applicant group has fully complied with the provisions of this subchapter. No risk retention group organized, formed, or domiciled under the laws of this state shall transact business in this state unless so authorized by a subsisting certificate of registration issued by the commissioner.

(2) Notwithstanding any other provision to the contrary, all risk retention groups domiciled in this state shall file, annually on or before March 1, or within any extension of time therefor which the commissioner for good cause may have granted, with the State Insurance Department and the National Association of Insurance Commissioners, an annual statement in a form prescribed by the National Association of Insurance Commissioners and in diskette form, if required by the commissioner and completed in accordance with its instructions and the National Association of Insurance Commissioners' Accounting Practices and Procedures Manual.

(b) Before it may offer insurance in any state, each risk retention group shall also submit for approval to the commissioner of this state a plan of operation or feasibility study. The risk retention group shall submit an appropriate revision in the event of any subsequent material change in any item of the plan of operation or feasibility study, within ten (10) days of any such change. The risk retention group shall not offer any additional kinds of casualty insurance, in this state or in any

other state, until a revision of the plan of operation or feasibility study is approved by the commissioner.

(c) At the time of filing its application for a certificate of registration, the risk retention group shall provide to the commissioner in summary form the following information: the identity of the initial members of the risk retention group, the identity of those individuals who organized the risk retention group or who will provide administrative services or otherwise influence or control the activities of the risk retention group, the amount and nature of initial capitalization, the coverages to be afforded, and the states in which the risk retention group intends to operate. Upon receipt of this information, the commissioner shall forward such information to the National Association of Insurance Commissioners. Providing notification to the National Association of Insurance Commissioners is in addition to and shall not be sufficient to satisfy the requirements of § 23-94-205 or any other sections of this subchapter.

(d)(1) Beginning July 1, 2018, an existing risk retention group shall comply with the governance standards in subsections (e)-(j) of this section.

(2) A risk retention group applying for initial licensure in this state shall comply with the governance standards in this section at the time of licensure.

(e) As used in this section:

(1) "Board of directors" means a governing body of a risk retention group that is elected by the shareholders or members of the risk retention group to:

(A) Establish policy;

(B) Elect or appoint officers and committees; and

(C) Make other governing decisions for the risk retention group; and

(2) "Director" means an individual designated in the articles of the risk retention group, or designated, elected, or appointed by any other manner, name, or title to act as a director.

(f)(1)(A) The board of directors of a risk retention group shall have a majority of independent directors.

(B)(i) If the risk retention group is a reciprocal risk retention group, then an appointed attorney-in-fact of the reciprocal risk retention group is required to adhere to the same standards described in this section regarding independence of operation and governance as imposed on the board of directors or on the subscribers' advisory committee of the risk retention group.

(ii) To the extent permissible under state law, a service provider of a reciprocal risk retention group shall contract with the risk retention group and not the attorney-in-fact.

(2)(A) A director shall not qualify as independent unless the board of directors affirmatively determines that the director does not have a material relationship with the risk retention group.

(B) A risk retention group shall annually disclose to the commissioner of the domiciliary state of the risk retention group the

determinations made by the board of directors under subdivision (f)(2)(A) of this section.

(3)(A) A director who is a direct or indirect owner of or subscriber in the risk retention group is independent for purposes of subdivision (f)(1)(A) of this section.

(B) Subdivision (f)(3)(A) of this section includes an officer, director, or employee of a direct or indirect owner of or subscriber in the risk retention group, unless a different position of the officer, director, or employee constitutes a material relationship, as contemplated by section 3901(a)(4)(E)(ii) of the Liability Risk Retention Act of 1986, 15 U.S.C. § 3901 et seq., as it existed on January 1, 2017.

(4) A person has a material relationship with a risk retention group if the person, a member of the person's immediate family, or any business with which the person is affiliated, has received from the risk retention group or a consultant or service provider to the risk retention group in the previous twelve-month period, any compensation, payment, or any other item of value, that is greater than or equal to five percent (5%) of the risk retention group's gross written premium for the same twelve-month period or two percent (2%) of its surplus, whichever is greater, as measured at the end of any fiscal quarter falling in the twelve-month period.

(5) To determine whether or not a person is independent for the purposes of this section:

(A) A person or an immediate family member of the person under subdivision (f)(4) of this section shall not be independent until at least one (1) year after receipt of any compensation from the risk retention group that falls below the threshold;

(B) A director or an immediate family member of a director who is affiliated with or employed in a professional capacity by a present or former internal or external auditor of the risk retention group shall not be independent until one (1) year after the end of the affiliation, employment, or auditing relationship; or

(C) A director or immediate family member of a director who is employed as an executive officer of another company where any of the risk retention group's present executives serve on that other company's board of directors shall not be independent until one (1) year after the end of the service or the employment relationship.

(g)(1) The term of any material service provider contract with the risk retention group shall not exceed five (5) years.

(2) A material service provider contract, or its renewal, requires the approval of the majority of the risk retention group's independent directors.

(3) The board of directors may terminate any service provider, audit, or actuarial contracts at any time for cause after providing adequate notice as defined in the contract.

(4) The service provider contract is deemed material if the amount to be paid for a contract is greater than or equal to five percent (5%) of the risk retention group's annual gross written premium or two percent (2%) of its surplus, whichever is greater.

(5) A service provider contract that qualifies as a material relationship described in subdivision (f)(4) of this section shall not be entered into unless the risk retention group has notified the commissioner in writing of its intention to enter into a transaction at least thirty (30) days before the transaction and the commissioner has not disapproved it within that period.

(6)(A) As used in this subsection, “service provider” includes a captive manager, auditor, accountant, actuary, investment advisor, lawyer, managing general underwriter, or other party responsible for underwriting, determining rates, collecting premiums, adjusting and settling claims, or preparing financial statements.

(B) “Service provider” does not include a lawyer who is retained as defense counsel by the risk retention group to defend claims unless the amount of fees paid to a lawyer qualifies as a material relationship described in subdivision (f)(4) of this section.

(h)(1) The board of directors shall adopt a written policy in the plan of operation as approved by the board of directors.

(2) The written policy described in subdivision (h)(1) of this section shall require the board of directors to:

(A) Assure that an owner or insured of the risk retention group receives evidence of ownership interest;

(B) Develop a set of governance standards applicable to the risk retention group;

(C) Oversee the evaluation of the risk retention group’s management, including without limitation the performance of the captive manager, managing general underwriter, or other party responsible for underwriting, determining rates, collecting premiums, adjusting or settling claims, or preparing financial statements;

(D) Review and approve the amount to be paid for all material service providers; and

(E) Annually review and approve:

(i) Goals and objectives of the risk retention group relevant to the compensation of officers and service providers;

(ii) The performance of officers and service providers in light of the goals and objectives described in subdivision (h)(2)(E)(i) of this section; and

(iii) The continued engagement of the officers and material service providers.

(i)(1)(A) A risk retention group shall have an audit committee composed of at least three (3) independent members of the board of directors as defined in subdivision (f)(1) of this section.

(B)(i) A member of the board of directors who is not independent shall not be a member of an audit committee of a risk retention group.

(ii) A member of the board of directors who is not independent may participate in the activities of the audit committee if invited by members of the audit committee.

(2) The audit committee shall have a written charter that defines the purpose of the audit committee, as follows:

(A) Assist the board of directors in oversight of:

(i) The integrity of the financial statements of the risk retention group;

(ii) Compliance with legal and regulatory requirements; and

(iii) The qualifications, independence, and performance of the independent auditor and actuary of the risk retention group;

(B) Discuss the annual audited financial statements and quarterly financial statements with the management of the risk retention group;

(C) Discuss with the independent auditor of the risk retention group:

(i) The annual audited financial statements of the risk retention group; and

(ii) If advisable, the quarterly financial statements;

(D) Discuss policies with respect to risk assessment and risk management;

(E) Have meetings with the management of the risk retention group and the independent auditor separately and periodically, either directly or through a designated representative of the audit committee;

(F) Review any audit problems or difficulties and the response by the management of the risk retention group with the independent auditor;

(G) Set clear hiring policies of the risk retention group as to the hiring of an employee or former employee of the independent auditor;

(H) Require the external auditor to rotate the lead or coordinating audit partner that has primary responsibility for the audit of the risk retention group and the audit partner that is responsible for reviewing the audit of the risk retention group so that neither individual performs the audit services for more than five (5) consecutive fiscal years; and

(I) Report regularly to the board of directors.

(3) The commissioner of the domiciliary state of the risk retention group may waive the requirement to establish an audit committee required in subdivision (i)(1)(A) of this section if the risk retention group is able to demonstrate to the commissioner of the domiciliary state of the risk retention group that:

(A) It is impracticable to do so; and

(B) The board of directors is able to accomplish the purposes of an audit committee as described in subdivision (i)(2) of this section.

(j)(1)(A) The board of directors shall adopt and disclose its governance standards by making the information available through electronic methods, including without limitation by posting the information on the public website of the risk retention group, or by other means and providing the information to members or insureds upon request.

(B) The information under subdivision (j)(1)(A) of this section shall include:

- (i) A process by which the directors are elected by the owners or insureds;
- (ii) Director qualification standards;
- (iii) Director responsibilities;
- (iv) Director access to the management of the risk retention group and, as necessary and appropriate, to independent advisors;
- (v) Director compensation;
- (vi) Director orientation and continuing education;
- (vii) The policies and procedures that are followed for management succession; and
- (viii) The policies and procedures that are followed for annual performance evaluation of the board of directors.

(2)(A)(i) The board of directors shall adopt and disclose a code of business conduct and ethics for directors, officers, and employees.

(ii) The code of business conduct and ethics for directors, officers, and employees shall include the following topics:

- (a) Conflicts of interest;
- (b) Matters covered under the corporate opportunities doctrine under the state of domicile;
- (c) Confidentiality;
- (d) Fair dealing;
- (e) Protection and proper use of risk retention group assets;
- (f) Compliance with all applicable laws and rules; and
- (g) Requiring the reporting of any illegal or unethical behavior that affects the operation of the risk retention group.

(iii) The captive manager, president, or chief executive officer of the risk retention group shall promptly notify the commissioner of the domiciliary state of the risk retention group in writing if he or she becomes aware of any material noncompliance with any of the governance standards in this section.

(B) Any waivers of the code of business conduct and ethics for directors or executive officers shall promptly be disclosed to the board of directors.

History. Acts 1995, No. 623, § 1; 2017, No. 283, § 19; 2019, No. 315, § 2784; 2019, No. 391, §§ 12, 13.

Amendments. The 2017 amendment added (d) through (j).

The 2019 amendment by No. 315 deleted “regulations” following “rules” twice in (a)(1).

The 2019 amendment by No. 391 substituted “management of the risk retention group” for “group’s management” in (i)(2)(B), (E), (F), and (j)(1)(B)(iv).

23-94-205. Foreign risk retention groups.

Risk retention groups chartered and licensed in states other than this state and seeking to do business as a risk retention group in this state must apply for and obtain a certificate of registration from the commissioner using the forms prescribed by the State Insurance Department. The commissioner shall issue a certificate of registration to risk

retention groups chartered and licensed under the laws of other states when the commissioner is satisfied that the applicant groups have complied with the provisions of this subchapter. No risk retention group chartered and licensed in states other than this state shall transact business in this state unless so authorized by a subsisting certificate of registration issued by the commissioner. Each such group shall comply with the laws of this state as follows:

(1) NOTICE OF OPERATIONS AND DESIGNATION OF COMMISSIONER AS AGENT.

(A) Before offering insurance in this state, a risk retention group shall submit to the commissioner on a form prescribed by the National Association of Insurance Commissioners:

(i) A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, charter date, its principal place of business, and such other information, including information on its membership, as the commissioner may require to verify that the risk retention group is qualified under § 23-94-203(12);

(ii) A copy of its plan of operation or feasibility study and revisions of the plan of operation or feasibility study submitted to the state in which the risk retention group is chartered and licensed, provided, however, that the provision relating to the submission of a plan of operation or feasibility study shall not apply with respect to any line or classification of liability insurance which:

(a) Was defined in the Product Liability Risk Retention Act of 1981 before October 27, 1986; and

(b) Was offered before that date by any risk retention group which had been chartered and operating for not less than three (3) years before that date; and

(B) The risk retention group shall submit a copy of any revision to its plan of operation or feasibility study required pursuant to § 23-94-204(b) at the same time that such revision is submitted to the commissioner of its chartering state.

(C) The risk retention group shall submit a statement of registration, for which a filing fee shall be determined by the commissioner, which designates the commissioner as its agent for the purpose of receiving service of legal documents or process.

(2) FINANCIAL CONDITION. Any risk retention group doing business in this state shall submit to the commissioner annually on or before March 1, or within any extension of time therefor which the commissioner for good cause may have granted, an annual statement in a form prescribed by the National Association of Insurance Commissioners and completed in accordance with the instructions and the National Association of Insurance Commissioners' Accounting Practices and Procedures Manual. Additional information that must be submitted to the commissioner by the risk retention group doing business in this state shall include all of the following:

(A) A copy of the risk retention group's financial statement submitted to the state in which the risk retention group is chartered and

licensed which shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist under criteria established by the National Association of Insurance Commissioners;

(B) A copy of each examination of the risk retention group as certified by the commissioner or public official conducting the examination;

(C) Upon request by the commissioner, a copy of any information or document pertaining to any outside audit performed with respect to the risk retention group; and

(D) Such information as may be required to verify its continuing qualification as a risk retention group under § 23-94-203(12).

(3)(A) AGENT AND BROKER RECORDS. To the extent that insurance agents or brokers are utilized under § 23-94-213, the insurance agent or broker shall report to the commissioner the premiums for direct business written for risks resident or located within this state that the licensees have placed with or on behalf of a risk retention group that is not chartered in this state.

(B) Agents and brokers utilized under § 23-94-213 shall keep a complete and separate record of all policies procured from each such risk retention group, which record shall be open to examination by the commissioner.

(C) These records shall, for each policy and each kind of insurance provided thereunder, include the following:

- (i) The limit of liability;
- (ii) The time period covered;
- (iii) The effective date;
- (iv) The name of the risk retention group which issued the policy;
- (v) The gross premium charged; and
- (vi) The amount of return premiums, if any.

(4) COMPLIANCE WITH TRADE PRACTICES ACT. Any risk retention group, its agents, and its representatives shall comply with the provisions of the Trade Practices Act, § 23-66-201 et seq., and other pertinent provisions of the Arkansas Insurance Code. Any risk retention group, its agents, and its representatives shall comply with the provisions of the claims settlement practices in § 23-66-206(9) and (10) and other pertinent provisions of the Arkansas Insurance Code. Any risk retention group shall comply with the provisions of Arkansas law regarding deceptive, false, or fraudulent acts or practices. If the commissioner seeks an injunction regarding deceptive, false, or fraudulent conduct, the injunction must be from a court of competent jurisdiction.

(5) EXAMINATION REGARDING FINANCIAL CONDITION. Any risk retention group must submit to an examination by the commissioner to determine its financial condition if the commissioner of the jurisdiction in which the risk retention group is chartered and licensed has not initiated an examination or does not initiate an examination within sixty (60) days after a request by the commissioner of this state. Any

such examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner and in accordance with the most current edition of the National Association of Insurance Commissioners' Financial Condition Examiners Handbook.

(6) NOTICE TO PURCHASERS. Every application form for insurance from a risk retention group, and every policy on its front and declaration pages issued by a risk retention group, shall contain in 10-point type the following notice:

"NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group."

(7) PROHIBITED ACTS REGARDING SOLICITATION OR SALE. The following acts by a risk retention group are hereby prohibited:

(A) The solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in the risk retention group; and

(B) The solicitation or sale of insurance by, or operation of, a risk retention group that is in hazardous financial condition or financially impaired.

(8) PROHIBITION ON OWNERSHIP BY AN INSURANCE COMPANY. No risk retention group shall be allowed to do business in this state if an insurance company is directly or indirectly a member or owner of such risk retention group, other than in the case of a risk retention group all of whose members are insurance companies.

(9) PROHIBITED COVERAGE. The terms of any insurance policy issued by any risk retention group shall not provide, or be construed to provide, coverage prohibited generally by statute of this state or declared unlawful by the highest court of this state whose law applies to such policy.

(10) DELINQUENCY PROCEEDINGS. A risk retention group not chartered in this state and doing business in this state shall comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by a state insurance commissioner if there has been a finding of financial impairment after an examination under subdivision (5) of this section.

(11) PENALTIES. A risk retention group that violates any provision of this subchapter will be subject to fines and penalties, including revocation of its right to do business in this state, applicable to licensed insurers generally.

(12) OPERATION PRIOR TO ENACTMENT OF THIS SUBCHAPTER. In addition to complying with the requirements of this section, any risk retention group operating in this state prior to March 14, 1995, shall, within thirty (30) days after March 14, 1995, comply with the provisions of subdivision (1)(A) of this section.

History. Acts 1995, No. 623, § 1; 2017, No. 283, § 20.

Amendments. The 2017 amendment redesignated the former introductory language of (3) as present (3)(A), present (3)(B), and the present introductory language of (3)(C); in present (3)(A), substituted “under § 23-94-213, the insurance agent” for “pursuant to § 23-94-213, such agent”, and added “shall report to the

commissioner the premiums for direct business written for risks resident or located within this state that the licensees have placed with or on behalf of a risk retention group that is not chartered in this state”; added “Agents and brokers utilized under § 23-94-213” in present (3)(B); and redesignated former (3)(A) through (3)(F) as present (3)(C)(i) through (3)(C)(vi).

RESEARCH REFERENCES

ALR. Construction and Application of Federal Product Liability Risk Retention Act of 1981, and Amending Liability Risk

Retention Act of 1996, 15 U.S.C. §§ 3901 et seq. 11 A.L.R. Fed. 3d Art. 3 (2016).

23-94-208. Notice and registration requirements of purchasing groups.

(a)(1) A purchasing group that intends to do business in this state shall obtain a certificate of registration from the Insurance Commissioner.

(2) The commissioner shall issue a certificate of registration to a purchasing group organized and formed under the laws of any state if the commissioner is satisfied that the applicant has complied with this subchapter.

(3)(A) Before doing business in this state, a purchasing group shall furnish notice to the commissioner on forms prescribed by the National Association of Insurance Commissioners.

(B) The notice required under subdivision (a)(3)(A) of this section shall:

(i) Identify the state in which the purchasing group is domiciled;

(ii) Identify all other states in which the purchasing group intends to do business;

(iii) Specify the lines and classifications of liability insurance that the purchasing group intends to purchase;

(iv) Identify the insurance company or companies from which the purchasing group intends to purchase its insurance and the domicile of the company;

(v) Specify the method by which, and the person or persons, if any, through whom insurance will be offered to its members whose risks are resident or located in this state;

(vi) Identify the principal place of business of the purchasing group; and

(vii) Provide such other information as may be required by the commissioner to verify that the purchasing group is qualified for a certificate of registration.

(b) A purchasing group shall, within ten (10) days, notify the commissioner of any changes in any of the items set forth in subsection (a) of this section.

(c) The purchasing group shall register with and designate the commissioner as its agent solely for the purpose of receiving service of legal documents or process, for which a filing fee shall be determined by the commissioner, except that such requirements shall not apply in the case of a purchasing group which only purchases insurance that was authorized under the Product Liability Risk Retention Act of 1981, and:

(1) Which in any state of the United States:

(A) Was domiciled before April 1, 1986; and

(B) Is domiciled on and after October 27, 1986;

(2) Which:

(A) Before October 27, 1986, purchased insurance from an insurance carrier licensed in any state; and

(B) Since October 27, 1986, purchased its insurance from an insurance carrier licensed in any state; or

(3) Which was a purchasing group under the requirements of the Product Liability Risk Retention Act of 1981 before October 27, 1986.

(d) Each purchasing group that is required to give notice pursuant to subsection (a) of this section shall also furnish such information as may be required by the commissioner to:

(1) Verify that the entity qualifies as a purchasing group;

(2) Determine where the purchasing group is located; and

(3) Determine appropriate tax treatment.

(e) Any purchasing group which was doing business in this state prior to March 14, 1995, shall, within thirty (30) days after March 14, 1995, furnish notice to the commissioner pursuant to the provisions of subsection (a) of this section and furnish such information as may be required pursuant to subsections (b) and (c) of this section.

History. Acts 1995, No. 623, § 1; 2017, No. 283, § 21.

Amendments. The 2017 amendment redesignated former (a) as present (a)(1) through (a)(3); in (a)(1), substituted “that” for “which”, “shall” for “must”, and “Insurance Commissioner” for “commissioner”; in (a)(2), substituted “if” for “when” and “has complied with this subchapter” for “group has fully complied with the provisions of this subchapter”; in (a)(3)(A), sub-

stituted “Before doing business in this state, a purchasing group shall” for “Each purchasing group which intends to do business in this state shall, prior to doing business” and deleted “which shall” preceding “on forms”; added (a)(3)(B); redesignated former (a)(1) through (a)(7) as present (a)(1)(B)(i) through (a)(1)(B)(vii); substituted “liability insurance that” for “casualty insurance which” in (a)(3)(B)(iii); and made stylistic changes.

RESEARCH REFERENCES

ALR. Construction and Application of Federal Product Liability Risk Retention Act of 1981, and Amending Liability Risk

Retention Act of 1996, 15 U.S.C. §§ 3901 et seq. 11 A.L.R. Fed. 3d Art. 3 (2016).

23-94-209. Restrictions on insurance purchased by purchasing groups.

(a) A purchasing group may not purchase insurance from a risk retention group that does not hold a certificate of registration in this

state or from an insurer not admitted in the state in which the purchasing group is located, unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus line laws and rules of such state.

(b) A purchasing group which obtains liability insurance from an insurer not admitted in this state or a risk retention group shall inform each of the members of the group which have a risk resident or located in this state that the risk is not protected by an insurance insolvency guaranty fund in this state, and that the risk retention group or insurer may not be subject to all insurance laws and rules of this state.

(c) No purchasing group may purchase insurance providing for a deductible or self-insured retention applicable to the group as a whole; however, coverage may provide for a deductible or self-insured retention applicable to individual members.

(d) Purchases of insurance by purchasing groups are subject to the same standards regarding aggregate limits which are applicable to all purchases of group insurance.

History. Acts 1995, No. 623, § 1; 2019, No. 315, § 2785. **Amendments.** The 2019 amendment substituted “rules” for “regulations” in (b).

23-94-215. Rules.

The commissioner may establish and from time to time amend such rules relating to risk retention groups as may be necessary or desirable to carry out the provisions of this subchapter.

History. Acts 1995, No. 623, § 1; 2019, No. 315, § 2786. **Amendments.** The 2019 amendment deleted “and regulations” following “rules” in the section heading.

Amendments. The 2019 amendment

CHAPTER 95

RISK-SHARING PLANS FOR PROPERTY AND CASUALTY INSURANCE

SECTION.
23-95-108. Rules.

23-95-108. Rules.

The Insurance Commissioner shall have the authority to promulgate rules necessary to effectuate the purpose of this chapter.

History. Acts 1987, No. 896, § 9; 2019, No. 315, § 2787. **Amendments.** The 2019 amendment deleted “and regulations” following “rules” in the section heading and in the text.

Amendments. The 2019 amendment

CHAPTER 96

ARKANSAS LIFE AND HEALTH INSURANCE
GUARANTY ASSOCIATION ACT

SECTION.

- 23-96-101. Title.
- 23-96-102. Purpose.
- 23-96-103. Construction — Applicability.
- 23-96-104. Definitions.
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- 23-96-107. Coverage.
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- 23-96-109. Creation of the association — Examination — Annual report — Tax exemption — Board of directors.
- 23-96-110. Powers and duties of association.
- 23-96-111. Impaired insurers.
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SECTION.

- 23-96-113. Authority of association when proceeding under § 23-96-111 or § 23-96-112.
- 23-96-114. Liability for benefits — Assignment or subrogation of rights — Definition.
- 23-96-115. Assessments — Tax credits.
- 23-96-116. Plan of operation.
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- 23-96-118. Duties and powers of Insurance Commissioner.
- 23-96-119. Distributions of ownership rights.
- 23-96-120. Payment of premiums.
- 23-96-121. Reissuance of terminated coverage.

23-96-101. Title.

This chapter shall be known and may be cited as the “Arkansas Life and Health Insurance Guaranty Association Act”.

History. Acts 1989, No. 444, § 1; 1997, No. 950, § 1; 2001, No. 1603, § 46; 2019, No. 520, § 2.

Amendments. The 2019 amendment inserted “may be” preceding “cited”.

23-96-102. Purpose.

(a) The purpose of this chapter is to protect, subject to certain limitations, the persons specified in § 23-96-107(a) against failure in the performance of contractual obligations under life and health and annuity policies, plans, or contracts specified in § 23-96-107(b) because of the impairment or insolvency of the member insurer that issued the policies, plans, or contracts.

(b) To provide this protection, an association of member insurers is created to pay benefits and to continue coverages as limited in this chapter, and members of the association are subject to assessment to provide funds to carry out the purpose of this chapter.

History. Acts 1989, No. 444, § 2; 1997, No. 950, § 1; 2001, No. 1603, § 47; 2019, No. 520, § 2.

Amendments. The 2019 amendment, in (a), deleted “and accident” following “life”, deleted “insurance policies” following “health”, substituted “annuity poli-

cies, plans, or contracts” for “annuity contracts”, and inserted “plans” following the second occurrence of “policies”; and, in (b), inserted “member” preceding “insurers” and substituted “limited in this chapter, and members” for “limited herein, and members”.

23-96-103. Construction — Applicability.

(a) This chapter shall be construed to effect the purpose under § 23-96-102.

(b) This chapter shall not be construed to reduce the liability for unpaid assessments of the insureds of an impaired or insolvent insurer operating under a plan with assessment liability.

History. Acts 1989, No. 444, §§ 4, 14, substituted “This chapter shall not be construed” for “Nothing in this chapter shall be construed” in (b).
Amendments. The 2019 amendment shall be construed in (b).

23-96-104. Definitions.

As used in this chapter:

(1) “Account” means any of the two (2) accounts created under § 23-96-109;

(2) “Association” means the Arkansas Life and Health Insurance Guaranty Association created under § 23-96-109;

(3) “Authorized assessment” or the term “authorized” when used in the context of assessments means a resolution by the Board of Directors of the Arkansas Life and Health Insurance Guaranty Association has been passed whereby an assessment will be called immediately or in the future from member insurers for a specified amount. An assessment is authorized when the resolution is passed;

(4) “Benefit plan” means a specific employee, union, or association of natural persons benefit plan;

(5)(A) “Called assessment” or the term “called” when used in the context of assessments means that a notice has been issued by the Arkansas Life and Health Insurance Guaranty Association to member insurers requiring that an authorized assessment be paid within the time frame set forth within the notice.

(B) An authorized assessment becomes a called assessment when notice is mailed by the Arkansas Life and Health Insurance Guaranty Association to member insurers;

(6) “Commissioner” means the Insurance Commissioner of this state;

(7) “Contractual obligations” means any obligation under a policy or contract or certificate under a group policy or contract, or portion thereof for which coverage is provided under § 23-96-107;

(8) “Covered policy” or “covered contract” means any policy or contract or portion of a policy or contract for which coverage is provided under § 23-96-107;

(9) “Extra-contractual claims” includes, for example, claims relating to bad faith in the payment of claims, punitive or exemplary damages, or attorney’s fees and costs;

(10)(A) “Health benefit plan” means any hospital or medical expense policy or certificate, health maintenance organization subscriber contract, or any other similar health contract.

(B) “Health benefit plan” does not include:

(i) Accident-only insurance;

- (ii) Credit insurance;
 - (iii) Dental-only insurance;
 - (iv) Vision-only insurance;
 - (v) Medicare supplement insurance;
 - (vi) Benefits for long-term care, home health care, community-based care, or any combination of the benefits described in this subdivision (10)(B)(vi);
 - (vii) Disability income insurance;
 - (viii) Coverage for on-site medical clinics; or
 - (ix) Specified disease, hospital confinement indemnity, or limited benefit health insurance if the types of coverage do not provide coordination of benefits and are provided under separate policies or certificates;
- (11) "Impaired insurer" means a member insurer which, after March 9, 1989, is not an insolvent insurer and is placed under an order of rehabilitation or conservation by a court of competent jurisdiction;
- (12) "Insolvent insurer" means a member insurer which, after March 9, 1989, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency;
- (13) "Member insurer" means any insurer or health maintenance organization licensed or which holds a certificate of authority to transact in this state any kind of insurance or health maintenance organization business for which coverage is provided under § 23-96-107, and includes any insurer or health maintenance organization whose license or certificate of authority in this state may have been suspended, revoked, not renewed, or voluntarily withdrawn, but does not include:
- (A) A hospital or medical service organization, whether profit or nonprofit;
 - (B) A fraternal benefit society;
 - (C) A mandatory state pooling plan;
 - (D) A burial association;
 - (E) An insurance exchange;
 - (F) Prepaid funeral trusts;
 - (G) An organization that has a certificate or license limited to the issuance of charitable gift annuities; or
 - (H) Any entity similar to any of those listed in subdivisions (13)(A)-(G) of this section;
- (14) "Moody's Corporate Bond Yield Average" means the Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto;
- (15)(A) "Owner" of a policy or contract and "policyholder", "policy owner", and "contract owner" mean the person who is identified as the legal owner under the terms of the policy or contract or who is otherwise vested with legal title to the policy or contract through a valid assignment completed according to the terms of the policy or contract and properly recorded as the owner on the books of the member insurer.

(B) “Owner”, “contract owner”, “policyholder”, and “policy owner” do not include persons with a mere beneficial interest in a policy or contract;

(16)(A) “Person” means any individual, corporation, limited liability company, partnership, association, governmental body or entity, or voluntary organization.

(B) It is the intent of the General Assembly that “person” shall include a claimant or beneficiary who is receiving annuity benefits as provided in § 11-9-210 and §§ 23-96-114(b) and 23-96-114(f);

(17) “Plan sponsor” means:

(A) The employer in the case of a benefit plan established or maintained by a single employer;

(B) The employee organization in the case of a benefit plan established or maintained by an employee organization; or

(C) In a case of a benefit plan established or maintained by two (2) or more employers or jointly by one (1) or more employers and one (1) or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan;

(18)(A) “Premiums” means amounts or considerations, by whatever name called, received on covered policies or contracts less returned premiums, considerations, and deposits and less dividends and experience credits.

(B)(i) “Premiums” does not include amounts or considerations received for any policies or contracts or for the portions of policies or contracts for which coverage is not provided under § 23-96-106, except that assessable premiums shall not be reduced on account of § 23-96-106(a)(3), relating to interest limitations and § 23-96-114(a)(2), relating to limitations with respect to one (1) individual, one (1) participant, and one (1) policy or contract owner.

(ii) However, “premiums” does not include:

(a) Any premiums in excess of one million dollars (\$1,000,000) on an unallocated annuity contract not issued under a governmental retirement benefit plan, or its trustee, established under section 401(k), section 403(b), or section 457 of the Internal Revenue Code; or

(b) With respect to multiple nongroup policies of life insurance owned by one (1) owner, whether the policy or contract owner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees, or other persons, premiums in excess of one million dollars (\$1,000,000) with respect to these policies or contracts, regardless of the number of policies or contracts held by the owner;

(19)(A) “Principal place of business” of a plan sponsor or a person other than a natural person means the single state in which the natural persons who establish policy for the direction, control, and coordination of the operations of the entity as a whole primarily exercise that function, determined by the Arkansas Life and Health Insurance Guaranty Association in its reasonable judgment by considering the following factors:

(i) The state in which the primary executive and administrative headquarters of the entity is located;

(ii) The state in which the principal office of the chief executive officer of the entity is located;

(iii) The state in which the board of directors, or similar governing person or persons, of the entity conducts the majority of its meetings;

(iv) The state in which the executive or management committee of the board of directors, or similar governing person or persons, of the entity conducts the majority of its meetings;

(v) The state from which the management of the overall operations of the entity is directed; and

(vi)(a) In the case of a benefit plan sponsored by affiliated companies composing a consolidated corporation, the state in which the holding company or controlling affiliate has its principal place of business as determined using the above factors.

(b) However, in the case of a plan sponsor, if more than fifty percent (50%) of the participants in the benefit plan are employed in a single state, that state shall be deemed to be the principal place of business of the plan sponsor.

(B) The principal place of business of a plan sponsor of a benefit plan described in subdivision (17)(C) of this section shall be deemed to be the principal place of business of the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan that, in lieu of a specific or clear designation of a principal place of business, shall be deemed to be the principal place of business of the employer or employee organization that has the largest investment in the benefit plan in question;

(20) "Receivership court" means the court in the insolvent or impaired insurer's state having jurisdiction over the conservation, rehabilitation, or liquidation of the member insurer;

(21) "Resident" means a person to whom a contractual obligation is owed and who resides in this state on the date of entry of a court order that determines a member insurer to be an impaired insurer or a court order that determines a member insurer to be an insolvent insurer. A person may be a resident of only one (1) state, which in the case of a person other than a natural person shall be its principal place of business. Citizens of the United States that are either (i) residents of foreign countries, or (ii) residents of United States possessions, territories, or protectorates that do not have an association similar to the Arkansas Life and Health Insurance Guaranty Association created by this chapter shall be deemed residents of the state of domicile of the member insurer that issued the policies or contracts;

(22) "State" means a state, the District of Columbia, Puerto Rico, and a United States possession, territory, or protectorate;

(23) "Structured settlement annuity" means an annuity purchased in order to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the plaintiff or other claimant;

(24) “Supplemental contract” means a written agreement entered into for the distribution of proceeds under a life, health, or an annuity policy or contract; and

(25)(A) “Unallocated annuity contract” means an annuity contract or group annuity certificate which is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under such contract or certificate.

(B) It is the intent of the General Assembly that an annuity contract as provided for in § 11-9-210, shall not be an “unallocated annuity contract”.

History. Acts 1989, No. 444, § 5; 1991, No. 651, § 2; 1997, No. 950, § 1; 2001, No. 1603, §§ 48, 49; 2001, No. 1604, § 119; 2013, No. 456, § 1; 2019, No. 520, § 2.

Amendments. The 2019 amendment substituted “resolution by the Board of Directors of the Arkansas Life and Health Insurance Guaranty Association has been passed” for “resolution by the board of directors has been passed” in (3); redesignated former (5) as (5)(A) and (5)(B); inserted present (10) and redesignated the remaining subdivisions accordingly; inserted “or health maintenance organization” throughout the introductory language of (13) and made a similar change; deleted former (13)(B) and redesignated the remaining subdivisions accordingly; substituted “any of those listed in subdivisions

(13)(A)-(G) of this section” for “any of the above” in (13)(H); inserted “policyholder” in (15)(A) and (15)(B); in (15)(A), substituted “completed according to the terms” for “completed in accordance with the terms” and added “member”; substituted “Owner” for “The terms ‘owner’” in (15)(B); in the introductory language of (18)(B)(i), substituted “premiums” for “premium” and added “policy or”; substituted “however, ‘premiums’ does not include” for “Provided, ‘premiums’ shall not include” in (18)(B)(ii); inserted “or contract” following “policy” in (18)(B)(ii)(b); substituted “subdivision (17)(C)” for “subdivision (16)(C)” in (19)(B); added “member” in (20) and in the second sentence of (21); deleted “an accident and” following “life” in (24); and made stylistic changes.

23-96-105. Advertisement of association act in insurance sales — Notice to policy owners.

(a)(1) A person, including a member insurer, agent, or affiliate of a member insurer, shall not make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in any newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television station, or in any other way, any advertisement, announcement, or statement, written or oral, which uses the existence of the Arkansas Life and Health Insurance Guaranty Association for the purpose of sales, solicitation, or inducement to purchase any form of insurance or other coverage covered by this chapter, except in conformity with the rules of the Insurance Commissioner.

(2) In adopting such rules, the commissioner, in consultation with the Board of Directors of the Arkansas Life and Health Insurance Guaranty Association, shall take into consideration the following factors:

(A) The need of the public to have confidence in the financial soundness of insurance and health maintenance organization products offered for sale in this state;

(B) The financial integrity of member insurers doing business in this state; and

(C) The role of the association in serving as a safety net for policy owners, contract owners, insureds, certificate holders, enrollees, and beneficiaries of impaired insurers or insolvent insurers in this state.

(3) This section shall not apply to the association or any other entity which does not sell or solicit insurance or coverage by a health maintenance organization.

(b)(1)(A) Within one hundred eighty (180) days of March 9, 1989, the association shall prepare a summary document describing the general purpose and current limitations of this chapter and complying with subsection (c) of this section.

(B) The summary document required under subdivision (b)(1)(A) of this section shall be submitted to the commissioner for approval.

(C) Sixty (60) days after receiving such approval, a member insurer shall not deliver a policy or contract described in § 23-96-107(b) to a policy owner, contract owner, certificate holder, or enrollee unless the summary document is delivered to the policy owner, contract owner, certificate holder, or enrollee at the time of delivery of the policy or contract unless § 23-96-107(c) applies.

(2)(A) The document should also be available upon request by a policy owner, contract owner, certificate holder, or enrollee.

(B) The distribution, delivery, or contents or interpretation of this document does not guarantee that either the policy or the contract or the policy owner, contract owner, certificate holder, or enrollee thereof is covered in the event of the impairment or insolvency of a member insurer.

(C) The description document shall be revised by the association as amendments to this chapter may require.

(D) Failure to receive this document does not give the policy owner, contract owner, certificate holder, enrollee, or insured any greater rights than those stated in this chapter.

(c)(1) The document prepared under subsection (b) of this section shall contain a clear and conspicuous disclaimer on its face.

(2) The commissioner shall establish the form and content of the disclaimer.

(3) The disclaimer shall:

(A) State the name and address of the association and the State Insurance Department;

(B) Prominently warn the policy owner, contract owner, certificate holder, or enrollee that the association may not cover the policy or contract or, if coverage is available, that the coverage will be subject to substantial limitations, exclusions, and conditioned on continued residence in this state;

(C) State the types of policies or contracts for which guaranty funds will provide coverage;

(D) State that the member insurer and its agents are prohibited by law from using the existence of the association for the purpose of sales, solicitation, or inducement to purchase any form of insurance or health maintenance organization product;

(E) State that the policy owner, contract owner, certificate holder, or enrollee should not rely on coverage under the association when selecting an insurer or health maintenance organization;

(F) Explain rights available and procedures for filing a complaint of a violation of any provisions of this chapter; and

(G) Provide other information as directed by the commissioner, including without limitation sources of information about financial conditions of member insurers, if the information is not proprietary and is subject to disclosure under that state's public records law.

History. Acts 1989, No. 444, § 19; 1997, No. 950, § 1; 2001, No. 1603, §§ 50, 51; 2019, No. 315, § 2788; 2019, No. 520, § 2.

Amendments. The 2019 amendment by No. 315 deleted “and regulations” following “rules” twice in (a).

The 2019 amendment by No. 520 rewrote (a); substituted “The summary document required under subdivision (b)(1)(A) of this section shall” for “This document shall” in (b)(1)(B); in (b)(1)(C), substituted “a member insurer shall not deliver” for “no insurer may deliver”, inserted “certificate holder, or enrollee” twice, and substituted “contract unless § 23-96-107(c) applies” for “contract except if § 23-96-107(c) applies”; added “contract owner, certificate holder, or enrollee” in (b)(2)(A) and (b)(2)(B); inserted

“policy” preceding “owner” in (b)(2)(B); inserted “enrollee” in (b)(2)(D); in (c)(3)(B), substituted “policy owner, contract owner, certificate holder, or enrollee that the association” for “policy owner or contract owner that the association”, inserted “or contract” following “policy”, and substituted “that the coverage will be subject” for “it will be subject”; inserted “or contracts” in (c)(3)(C); in (c)(3)(D), inserted “member” and added “or health maintenance organization product”; in (c)(3)(E), inserted “certificate holder, or enrollee” and added “or health maintenance organization”; and, in (c)(3)(G), substituted “including without limitation sources” for “including but not limited to, sources”, inserted “member”, and substituted “if the information” for “provided that the information”.

23-96-106. Scope of chapter.

(a) This chapter shall not provide coverage for:

(1) A portion of a policy or contract not guaranteed by the member insurer, or under which the risk is borne by the policy owner or contract owner;

(2) A portion of a policy or contract of reinsurance, unless assumption certificates have been issued under the reinsurance policy or contract;

(3) A policy or contract to the extent that the rate of interest on which it is based, or the interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value:

(A) Averaged over the period of four (4) years before the date on which the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier, exceeds a rate of interest determined by subtracting two (2) percentage points from Moody's Corporate Bond Yield Average averaged for that same four-year

period or for such lesser period if the policy or contract was issued less than four (4) years before the member insurer becomes an impaired insurer or insolvent insurer under this chapter, whichever is earlier; and

(B) On and after the date on which the Arkansas Life and Health Insurance Guaranty Association becomes obligated with respect to such policy or contract, exceeds the rate of interest determined by subtracting three (3) percentage points from Moody's Corporate Bond Yield Average as most recently available;

(4) A portion of a policy or contract issued to a plan or program of an employer, association, or other person to provide life, health, or annuity benefits to its employees, members, or others to the extent that the plan or program is self-funded or uninsured, including without limitation benefits payable by an employer, association, or other person under:

(A) A multiple employer welfare arrangement as defined in section 514 of the Employee Retirement Income Security Act of 1974, as amended;

(B) A minimum premium group insurance plan;

(C) A stop-loss group insurance plan; or

(D) An administrative services only contract;

(5) A portion of a policy or contract to the extent that it provides for dividends or experience rating credits, voting rights, or payment of any fees or allowances to any person, including the policy owner or contract owner, in connection with the service to or administration of such policy or contract;

(6) A policy or contract issued in this state by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue such policy or contract in this state;

(7) An unallocated annuity contract issued to or in connection with a benefit plan protected under the Pension Benefit Guaranty Corporation regardless of whether the Pension Benefit Guaranty Corporation has yet become liable to make any payments with respect to the benefit plan;

(8) A portion of an unallocated annuity contract that is not owned by a benefit plan, directly or in trust, or a government lottery or issued to a collective investment trust or similar pooled fund offered by a bank or other financial institution;

(9) Any policy or contract written on the mutual assessment plan or stipulated premium plan prior to January 1, 1968, for which no statutory legal reserves are required;

(10) A portion of a policy or contract to the extent that the assessments required by § 23-96-115 with respect to the policy or contract are preempted by federal or state law;

(11) An obligation that does not arise under the express written terms of the policy or contract issued by the member insurer to the contract owner, policy owner, certificate holder, or enrollee, including without limitation:

(A) Claims based on marketing materials;

(B) Claims based on side letters, riders, or other documents that were issued by the member insurer without meeting applicable policy or contract form filing or approval requirements;

(C) Misrepresentations of or regarding policy or contract benefits;

(D) Extra-contractual claims; or

(E) A claim for penalties or consequential or incidental damages;

(12) A contractual agreement that establishes the member insurer's obligations to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or its trustees, which in each case is not an affiliate of the member insurer;

(13)(A) A portion of a policy or contract to the extent it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but which has not been credited to the policy or contract, or as to which the policy owner's or contract owner's rights are subject to forfeiture, as of the date the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier.

(B) If a policy's or contract's interest or changes in value are credited less frequently than annually, then for purposes of determining the values that have been credited and are not subject to forfeiture under this subdivision (a)(13), the interest or change in value determined by using the procedures defined in the policy or contract will be credited as if the contractual date of crediting interest or changing values was the date of impairment or insolvency, whichever is earlier, and will not be subject to forfeiture;

(14) A policy or contract providing any hospital, medical, prescription drug, or other healthcare benefits pursuant to Part C or Part D of Subchapter XVIII, Chapter 7, Title 42 of the United States Code, 42 U.S.C. §§ 1395 — 1395kkk-1, commonly known as "Medicare Parts C and D", or Title XIX of the Social Security Act, 42 U.S.C. §§ 1396 — 1396w5, commonly referred to as Medicaid, or any regulations issued pursuant thereto; and

(15) Structured settlement annuity benefits to which a payee, or beneficiary, has transferred his or her rights under a structured settlement factoring transaction as defined in 26 U.S.C. § 5891(c)(3)(A), regardless of whether or not the structured settlement factoring transaction occurred before or after the section became effective.

(b) The protection provided by this chapter shall not apply where any guaranty protection is provided to residents of this state by the laws of the domiciliary state or jurisdiction of the impaired insurer or insolvent insurer other than this state.

(c) The exclusion from coverage described in subdivision (a)(3) of this section does not apply to any portion of a policy or contract, including a rider, that provides long-term care or any other health insurance benefits.

History. Acts 1989, No. 444, §§ 3, 8; 1997, No. 950, § 1; 2001, No. 1603, § 52; 2001, No. 1604, § 120; 2013, No. 456, § 2; 2019, No. 520, § 2.

Amendments. The 2019 amendment inserted “member” in (a)(1); in the introductory language of (a)(4), deleted “accident and” preceding “health”; in the introductory language of (a)(11), inserted “member” and substituted “contract

owner, policy owner, certificate holder, or enrollee, including” for “contract owner or policy owner, including”; in (a)(11)(B), inserted “member” and inserted “or contract”; added “or contract” in (a)(11)(C); redesignated former (a)(13) as (a)(13)(A) and (a)(13)(B); rewrote (a)(14); added (a)(15); added (c); and made stylistic changes.

23-96-107. Coverage.

(a) This chapter shall provide coverage for the policies and contracts specified in subsection (b) of this section to:

(1) Persons who, regardless of where they reside, except for nonresident certificate holders under group policies or contracts, are the beneficiaries, assignees, or payees, including healthcare providers rendering services covered under health insurance policies or certificates of the persons covered under subdivision (a)(2) of this section;

(2) Persons who are owners of or certificate holders or enrollees under such policies or contracts, other than unallocated annuity contracts and structured settlement annuities, and in each case who:

(A) Are residents; or

(B) Are not residents, but only under all of the following conditions:

(i) The member insurer that issued the policies or contracts is domiciled in this state;

(ii) The states in which the persons reside have associations similar to the Arkansas Life and Health Insurance Guaranty Association created by this chapter; and

(iii) The persons are not eligible for coverage by an association in any other state because the insurer or the health maintenance organization was not licensed in the state at the time specified in the state’s guaranty association law;

(3) For unallocated annuity contracts specified in subsection (b) of this section, subdivisions (a)(1) and (2) of this section shall not apply, and except as provided in subdivisions (a)(5) and (6) of this section, this chapter shall provide coverage to:

(A) Persons who are the owners of the unallocated annuity contracts if the unallocated annuity contracts are issued to or in connection with a specific benefit plan whose plan sponsor has its principal place of business in this state; and

(B) Persons who are owners of unallocated annuity contracts issued to or in connection with government lotteries if the owners are residents;

(4) For structured settlement annuities specified in subsection (b) of this section, subdivisions (a)(1) and (2) of this section shall not apply, and except as provided in subdivisions (a)(5) and (6) of this section, this chapter shall provide coverage to a person who is a payee under a

structured settlement annuity, or beneficiary of a payee if the payee is deceased, if the payee:

(A) Is a resident, regardless of where the contract owner resides; or

(B) Is not a resident, but only under the following conditions:

(i) The contract owner of the structured settlement annuity:

(a) Is a resident; or

(b) Is not a resident, but the insurer that issued the structured settlement annuity is domiciled in this state;

(ii) The state in which the contract owner resides has an association similar to the Arkansas Life and Health Insurance Guaranty Association created by this chapter; and

(iii) Neither the payee, or beneficiary, nor the contract owner is eligible for coverage by the association of the state in which the payee or contract owner resides;

(5) This chapter shall not provide coverage for:

(A) A person who is a payee, or beneficiary, of a contract owner resident of this state, if the payee, or beneficiary, is afforded any coverage by the association of another state;

(B) A person covered in subdivision (a)(3) of this section if any coverage is provided by the association of another state to the person; or

(C) A person who acquires rights to receive payments through a structured settlement factoring transaction as defined in 26 U.S.C. § 5891(c)(3)(A), regardless of whether or not the structured settlement factoring transaction occurred before or after the section became effective;

(6)(A) This chapter is intended to provide coverage to a person who is a resident of this state and, in special circumstances, to a nonresident.

(B) In order to avoid duplicate coverage, if a person who would otherwise receive coverage under this chapter is provided coverage under the laws of any other state, the person shall not be provided coverage under this chapter.

(C) In determining the application of the provision of this subdivision (a)(6) in situations in which a person could be covered by the association of more than one (1) state, whether as an owner, payee, enrollee, beneficiary, or assignee, this chapter shall be construed in conjunction with other state laws to result in coverage by only one (1) association.

(b)(1) This chapter shall provide coverage to the persons specified in subsection (a) of this section for policies or contracts of direct, nongroup life insurance, health insurance that, for the purposes of this chapter, includes health maintenance organization subscriber contracts and certificates, or annuities for certificates under direct group policies and contracts, and for supplemental contracts to any of these, and for unallocated annuity contracts, in each case issued by member insurers, except as limited by this chapter.

(2) Annuity contracts and certificates under group annuity contracts include without limitation:

- (A) Guaranteed investment contracts;
- (B) Deposit administration contracts;
- (C) Unallocated funding agreements;
- (D) Allocated funding agreements;
- (E) Structured settlement annuities;
- (F) Annuities issued to or in connection with government lotteries;

and

- (G) Any immediate or deferred annuity contracts.

(c)(1) A member insurer or agent shall not deliver a policy or contract described in subsection (b) of this section and excluded under § 23-96-106(a)(1) from coverage under this chapter unless the member insurer or agent, before or at the time of delivery, gives the policy holder or contract holder a separate written notice which clearly and conspicuously discloses that the policy or contract is not covered by the Arkansas Life and Health Insurance Guaranty Association.

(2) The Insurance Commissioner shall by rule specify the form and content of the notice.

History. Acts 1989, No. 444, §§ 3, 19; 1997, No. 950, § 1; 2001, No. 1603, §§ 53, 54; 2013, No. 456, § 3; 2019, No. 520, § 2.

Amendments. The 2019 amendment inserted “including healthcare providers rendering services covered under health insurance policies or certificates” in (a)(1); inserted “or enrollees” in the introductory

language of (a)(2); inserted “member” in (a)(2)(B)(i); inserted “or the health maintenance organization” in (a)(2)(B)(iii); rewrote (a)(4)(B); added (a)(5)(C); redesignated former (a)(6) as (a)(6)(A), (a)(6)(B), and (a)(6)(C); inserted “enrollee” in (a)(6)(C); rewrote (b); inserted “member” twice in (c)(1); and made stylistic changes.

23-96-108. Immunity.

(a) The following are not liable for or subject to any cause of action resulting from an act or omission by them in the performance of their powers and duties under this chapter:

- (1) A member insurer or its agents or employees;
- (2) The Arkansas Life and Health Insurance Guaranty Association or its agents or employees;
- (3) Members of the Board of Directors of the Arkansas Life and Health Insurance Guaranty Association; or
- (4) The Insurance Commissioner or his or her representatives.

(b) Immunity under this section extends to the participation in any organization of one (1) or more other state associations of similar purposes and to any such organization and its agents or employees.

History. Acts 1989, No. 444, § 17; 1997, No. 950, § 1; 2019, No. 520, § 2.

Amendments. The 2019 amendment added the (a) and (b) designations; rewrote the introductory language of (a); deleted “for any action or omission by

them in the performance of their powers and duties under this chapter” following “representatives” in (a)(4); substituted “Immunity under this section extends” for “Such immunity shall extend” in (b); and made stylistic changes.

23-96-109. Creation of the association — Examination — Annual report — Tax exemption — Board of directors.

(a)(1)(A) There is created a nonprofit legal entity to be known as the “Arkansas Life and Health Insurance Guaranty Association”.

(B) All member insurers shall be and remain members of the association as a condition of their authority to transact insurance or a health maintenance organization business in this state.

(C) The association shall perform its functions under the plan of operation established and approved under § 23-96-116 and shall exercise its powers through a board of directors established under subsection (b) of this section.

(2)(A) The association shall come under the immediate supervision of the Insurance Commissioner and shall be subject to the applicable insurance laws of this state.

(B) Meetings or records of the association may be opened to the public upon majority vote of the Board of Directors of the Arkansas Life and Health Insurance Guaranty Association.

(3) The association shall be subject to examination and regulation by the commissioner.

(4)(A) The board shall submit to the commissioner each year, not later than one hundred twenty (120) days after the association’s fiscal year, a financial report in a form approved by the commissioner and a report of its activities during the preceding fiscal year.

(B) Upon request of a member insurer, the association shall provide the member insurer with a copy of the report.

(5) For purposes of administration and assessment, the association shall maintain two (2) accounts:

(A) The life insurance and annuity account, which includes the following subaccounts:

(i) Life insurance account;

(ii) Annuity account, which shall include annuity contracts owned by a governmental retirement plan, or its trustee, established under section 401(k), section 403(b), or section 457 of the Internal Revenue Code, but shall otherwise exclude unallocated annuities; and

(iii) Unallocated annuity account, which shall exclude contracts owned by a governmental retirement benefit plan, or its trustee, established under section 401(k), section 403(b), or section 457 of the Internal Revenue Code; and

(B) The health account.

(6) The association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions, except taxes levied on real property.

(b)(1)(A) The board shall consist of not less than five (5) nor more than nine (9) member insurers serving terms as established in the plan of operation.

(B) The members of the board shall be selected by member insurers subject to the approval of the commissioner.

(C) Vacancies on the board shall be filled for the remaining period of the term by a majority vote of the remaining board members, subject to the approval of the commissioner.

(2) In approving selections to the board, the commissioner shall consider, among other things, whether all member insurers are fairly represented.

(3) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board, but members of the board shall not otherwise be compensated by the association for their services.

History. Acts 1989, No. 444, §§ 6, 7, 15, 16; 1997, No. 950, § 1; 2001, No. 1603, §§ 55, 56; 2019, No. 520, § 2.

Amendments. The 2019 amendment redesignated former (a)(1) as (a)(1)(A), (a)(1)(B), and (a)(1)(C); inserted “or a health maintenance organization business” in (a)(1)(B); redesignated former

(a)(2) as (a)(2)(A) and (a)(2)(B); deleted “provisions of the” following “applicable” in (a)(2)(A); redesignated former (a)(4) as (a)(4)(A) and (a)(4)(B); and substituted “The health account” for “The accident and health insurance account” in (a)(5)(B).

23-96-110. Powers and duties of association.

(a) In addition to the rights and powers elsewhere in this chapter, the Arkansas Life and Health Insurance Guaranty Association may:

(1) Enter into such contracts as are necessary or proper to carry out this chapter;

(2) Sue or be sued, including taking any legal actions necessary or proper to recover any unpaid assessments under § 23-96-115 and to settle claims or potential claims against it;

(3)(A) Borrow money to effect the purposes of this chapter.

(B) Any notes or other evidence of indebtedness of the Arkansas Life and Health Insurance Guaranty Association not in default shall be legal investments for domestic member insurers and may be carried as admitted assets;

(4) Employ or retain such persons as are necessary or appropriate to handle the financial transactions of the Arkansas Life and Health Insurance Guaranty Association and to perform such other functions as become necessary or proper under this chapter;

(5) Take such legal action as may be necessary or appropriate to avoid or recover payment of improper claims;

(6)(A) Exercise, for the purpose of this chapter and to the extent approved by the Insurance Commissioner, the powers of a domestic life insurer, health insurer, or health maintenance organization.

(B) The Arkansas Life and Health Insurance Guaranty Association shall not issue policies or contracts other than those issued to perform its obligations under this chapter;

(7) Organize itself as a corporation or in other legal form permitted by the laws of this state;

(8) Request information from a person seeking coverage from the Arkansas Life and Health Insurance Guaranty Association in order to

aid the Arkansas Life and Health Insurance Guaranty Association in determining its obligations under this chapter with respect to the person, and the person shall promptly comply with the request;

(9) Unless prohibited by law, according to the terms and conditions of the policy or contract, file for actuarially justified rate or premium increases for any policy or contract for which the Arkansas Life and Health Insurance Guaranty Association provides coverage under this chapter; and

(10) Take other necessary or appropriate action to discharge its duties and obligations under this chapter or to exercise its powers under this chapter.

(b) The Arkansas Life and Health Insurance Guaranty Association may render assistance and advice to the commissioner, upon his or her request, concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of any impaired insurer or insolvent insurer.

(c)(1)(A) The Arkansas Life and Health Insurance Guaranty Association shall have standing to appear or intervene before any court or agency in this state with jurisdiction over an impaired insurer or insolvent insurer concerning which the Arkansas Life and Health Insurance Guaranty Association is or may become obligated under this chapter or with jurisdiction over any person or property against whom the Arkansas Life and Health Insurance Guaranty Association may have rights through subrogation or otherwise.

(B) Provided, at its option, the Arkansas Life and Health Insurance Guaranty Association may appear solely for the purpose of receiving copies of all pleadings and notices and attending hearings without otherwise becoming a party to the proceeding.

(C) Standing under this subdivision (c)(1) extends to all matters germane to the powers and duties of the Arkansas Life and Health Insurance Guaranty Association, including without limitation proposals for reinsuring, reissuing, modifying, or guaranteeing the policies or contracts of the impaired insurer or insolvent insurer and the determination of the policies or contracts and contractual obligations.

(2) The Arkansas Life and Health Insurance Guaranty Association shall also have the right to appear or intervene before a court or agency in another state with jurisdiction over an impaired insurer or insolvent insurer for which the Arkansas Life and Health Insurance Guaranty Association is or may become obligated or with jurisdiction over any person or property against whom the Arkansas Life and Health Insurance Guaranty Association may have rights through subrogation or otherwise.

(d) To further the purposes and administer the powers and duties of the Arkansas Life and Health Insurance Guaranty Association, the Arkansas Life and Health Insurance Guaranty Association may join an organization of one (1) or more other state associations of similar purposes.

(e)(1)(A) Records shall be kept of all meetings of the Board of Directors of the Arkansas Life and Health Insurance Guaranty Association to discuss the activities of the Arkansas Life and Health Insurance Guaranty Association in carrying out its powers and duties under §§ 23-96-111 — 23-96-114 and 23-96-120.

(B) The records of the Arkansas Life and Health Insurance Guaranty Association with respect to an impaired insurer or insolvent insurer shall not be disclosed before the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired insurer or insolvent insurer, upon the termination of the impairment or insolvency of the member insurer, or upon the order of a court of competent jurisdiction.

(2) This subsection shall not limit the duty of the Arkansas Life and Health Insurance Guaranty Association to render a report of its activities under § 23-96-109(a)(4).

(f)(1)(A)(i) At any time within one hundred eighty (180) days of the date of the order of liquidation, the Arkansas Life and Health Insurance Guaranty Association may elect to succeed to the rights and obligations of the ceding member insurer that relate to policies, contracts, or annuities covered, in whole or in part, by the Arkansas Life and Health Insurance Guaranty Association, in each case under any one (1) or more reinsurance contracts entered into by the insolvent insurer and its reinsurers and selected by the Arkansas Life and Health Insurance Guaranty Association.

(ii) Any such assumption shall be effective as of the date of the order of liquidation.

(iii) The election shall be effected by the Arkansas Life and Health Insurance Guaranty Association or the National Organization of Life and Health Insurance Guaranty Associations on its behalf sending written notice, return receipt requested, to the affected reinsurers.

(B) To facilitate the earliest practicable decision about whether to assume any of the contracts of reinsurance and in order to protect the financial position of the estate, the receiver and each reinsurer of the ceding member insurer shall make available upon request to the Arkansas Life and Health Insurance Guaranty Association or to the National Organization of Life and Health Insurance Guaranty Associations on its behalf as soon as possible after commencement of formal delinquency proceedings:

(i) Copies of in-force contracts of reinsurance and all related files and records relevant to the determination of whether such contracts should be assumed; and

(ii) Notices of any defaults under the reinsurance contracts or any known event or condition which with the passage of time could become a default under the reinsurance contracts.

(C) This subdivision (f)(1)(C) applies to reinsurance contracts so assumed by the Arkansas Life and Health Insurance Guaranty Association, as follows:

(i)(a) The Arkansas Life and Health Insurance Guaranty Association shall be responsible for all unpaid premiums due under the

reinsurance contracts for periods both before and after the date of the order of liquidation and shall be responsible for the performance of all other obligations to be performed after the date of the order of liquidation, in each case which relate to policies, contracts, or annuities covered, in whole or in part, by the Arkansas Life and Health Insurance Guaranty Association.

(b) The Arkansas Life and Health Insurance Guaranty Association may charge policies, contracts, or annuities covered in part by the Arkansas Life and Health Insurance Guaranty Association, through reasonable allocation methods, the costs for reinsurance in excess of the obligations of the Arkansas Life and Health Insurance Guaranty Association and shall provide notice and an accounting of these charges to the liquidator;

(ii)(a) The Arkansas Life and Health Insurance Guaranty Association shall be entitled to any amounts payable by the reinsurer under the reinsurance contracts with respect to losses or events that occur in periods after the date of the order of liquidation and that relate to policies, contracts, or annuities covered, in whole or in part, by the Arkansas Life and Health Insurance Guaranty Association.

(b) Upon receipt of amounts under subdivision (f)(1)(C)(ii)(a) of this section, the Arkansas Life and Health Insurance Guaranty Association shall pay to the beneficiary under the policy, contract, or annuity on account of which the amounts were paid a portion of the amount equal to the lesser of:

(1) The amount received by the Arkansas Life and Health Insurance Guaranty Association; and

(2) The excess of the amount received by the Arkansas Life and Health Insurance Guaranty Association over the amount equal to the benefits paid by the Arkansas Life and Health Insurance Guaranty Association on account of the policy, contract, or annuity less the retention of the insurer applicable to the loss or event;

(iii)(a) Within thirty (30) days following the Arkansas Life and Health Insurance Guaranty Association's election, the election date, the Arkansas Life and Health Insurance Guaranty Association and each reinsurer under contracts assumed by the Arkansas Life and Health Insurance Guaranty Association shall calculate the net balance due to or from the Arkansas Life and Health Insurance Guaranty Association under each reinsurance contract as of the election date with respect to policies, contracts, or annuities covered, in whole or in part, by the Arkansas Life and Health Insurance Guaranty Association, which calculation shall give full credit to all items paid by either the member insurer or its receiver or the reinsurer prior to the election date.

(b) The reinsurer shall pay the receiver any amounts due for losses or events before the date of the order of liquidation, subject to any set-off for premiums unpaid for periods before the date, and the Arkansas Life and Health Insurance Guaranty Association or reinsurer shall pay any remaining balance due the other, in each case

within five (5) days of the completion of the aforementioned calculation.

(c) Any disputes over the amounts due to either the Arkansas Life and Health Insurance Guaranty Association or the reinsurer shall be resolved by arbitration pursuant to the terms of the affected reinsurance contracts or, if the contract contains no arbitration clause, as otherwise provided by law.

(d) If the receiver has received any amounts due the Arkansas Life and Health Insurance Guaranty Association pursuant to subdivision (f)(1)(C)(ii) of this section, the receiver shall remit the same to the Arkansas Life and Health Insurance Guaranty Association as promptly as practicable; and

(iv) If the Arkansas Life and Health Insurance Guaranty Association or receiver, on the Arkansas Life and Health Insurance Guaranty Association's behalf, within sixty (60) days of the election date, pays the unpaid premiums due for periods both before and after the election date that relate to policies, contracts, or annuities covered, in whole or in part, by the Arkansas Life and Health Insurance Guaranty Association, the reinsurer shall not:

(a) Terminate the reinsurance contracts for failure to pay premium insofar as the reinsurance contracts relate to policies, contracts, or annuities covered, in whole or in part, by the Arkansas Life and Health Insurance Guaranty Association; and

(b) Set off any unpaid amounts due under other contracts, or unpaid amounts due from parties other than the Arkansas Life and Health Insurance Guaranty Association, against amounts due the Arkansas Life and Health Insurance Guaranty Association.

(2)(A) During the period from the date of the order of liquidation until the election date or, if the election date does not occur, until one hundred eighty (180) days after the date of the order of liquidation:

(i) Neither the Arkansas Life and Health Insurance Guaranty Association nor the reinsurer shall have any rights or obligations under reinsurance contracts that the Arkansas Life and Health Insurance Guaranty Association has the right to assume under subdivision (f)(1) of this section, whether for periods before or after the date of the order of liquidation; and

(ii) The reinsurer, the receiver, and the Arkansas Life and Health Insurance Guaranty Association shall, to the extent practicable, provide each other data and records reasonably requested.

(B) When the Arkansas Life and Health Insurance Guaranty Association has elected to assume a reinsurance contract, the parties' rights and obligations shall be governed by subdivision (f)(1) of this section.

(3) If the Arkansas Life and Health Insurance Guaranty Association does not elect to assume a reinsurance contract by the election date pursuant to subdivision (f)(1) of this section, the Arkansas Life and Health Insurance Guaranty Association shall have no rights or obligations, in each case for periods both before and after the date of the order of liquidation, with respect to the reinsurance contract.

(4) When policies, contracts, or annuities or covered obligations with respect thereto are transferred to an assuming insurer, reinsurance on the policies, contracts, or annuities may also be transferred by the Arkansas Life and Health Insurance Guaranty Association, in the case of contracts assumed under subdivision (f)(1) of this section, subject to the following:

(A) Unless the reinsurer and the assuming insurer agree otherwise, the reinsurance contract transferred shall not cover any new policies of insurance, contracts, or annuities in addition to those transferred;

(B) The obligations described in subdivision (f)(1) of this section shall no longer apply with respect to matters arising after the effective date of the transfer; and

(C) Notice shall be given in writing, return receipt requested, by the transferring party to the affected reinsurer not less than thirty (30) days before the effective date of the transfer.

(5)(A) This subsection shall supersede any state law or affected reinsurance agreement or agreements that provide for or require any payment of reinsurance proceeds, on account of losses or events that occur in periods after the coverage date, to the receiver, liquidator, or rehabilitator of the insolvent member insurer.

(B) The receiver, rehabilitator, or liquidator shall remain entitled to any amounts payable by the reinsurer under the reinsurance agreement or agreements with respect to losses or events that occur in periods before the coverage date, subject to applicable setoff provisions.

(6) Except as otherwise expressly provided under subdivision (f)(1)(C) of this section, this section does not:

(A) Alter or modify the terms and conditions of the indemnity reinsurance agreements of the insolvent member insurer;

(B) Abrogate or limit any rights of any reinsurer to claim that it is entitled to rescind a reinsurance agreement;

(C) Give a policyholder, contract owner, enrollee, certificate holder, or beneficiary an independent cause of action against an indemnity reinsurer that is not otherwise stated in the indemnity reinsurance agreement;

(D) Give a policyholder or beneficiary an independent cause of action against a reinsurer that is not otherwise stated in the reinsurance contract;

(E) Limit or affect the Arkansas Life and Health Insurance Guaranty Association's rights as a creditor of the estate against the assets of the estate; or

(F) Apply to reinsurance agreements covering property or casualty risks.

(g) The Board of Directors of the Arkansas Life and Health Insurance Guaranty Association shall have discretion and may exercise reasonable business judgment to determine the means by which the Arkansas Life and Health Insurance Guaranty Association is to provide the

benefits of this chapter in an economical and efficient manner and may provide additional or alternative coverages and benefits in appropriate situations.

(h) If the Arkansas Life and Health Insurance Guaranty Association has arranged or offered to provide the benefits of this chapter to a covered person under a plan or arrangement that fulfills the Arkansas Life and Health Insurance Guaranty Association's obligations under this chapter, the person shall not be entitled to benefits from the Arkansas Life and Health Insurance Guaranty Association in addition to or other than those provided under the plan or arrangement.

(i)(1) Venue in a suit against the Arkansas Life and Health Insurance Guaranty Association arising under this chapter shall be in Pulaski County.

(2) The Arkansas Life and Health Insurance Guaranty Association shall not be required to give an appeal bond in an appeal that relates to a cause of action arising under this chapter.

History. Acts 1989, No. 444, §§ 8, 14; 1997, No. 950, § 1; 2001, No. 1603, § 57; 2001, No. 1604, § 121; 2013, No. 456, § 4; 2019, No. 520, § 2.

Amendments. The 2019 amendment deleted "the provisions and purposes of" following "carry out" in (a)(1); added the (a)(3)(A) and (a)(3)(B) designations; in-

serted "member" in (a)(3)(B); rewrote (a)(6); inserted (a)(9), and redesignated former (a)(9) as (a)(10); added the (c)(1)(A) through (c)(1)(C) designations; inserted "reissuing" in (c)(1)(C); rewrote (d); inserted "member" in (e)(1)(B); rewrote (f); added the (i)(1) and (i)(2) designations; and made stylistic changes.

23-96-111. Impaired insurers.

If a member insurer is an impaired insurer, the Arkansas Life and Health Insurance Guaranty Association, in its discretion and subject to any conditions imposed by the association that do not impair the contractual obligations of the impaired insurer and that are approved by the Insurance Commissioner, may:

(1) Guarantee, assume, reissue, or reinsure, or cause to be guaranteed, assumed, reissued, or reinsured, any or all of the policies or contracts of the impaired insurer; or

(2) Provide the moneys, pledges, loans, notes, guarantees, or other means as are proper to effectuate subdivision (1) of this section and assure payment of the contractual obligations of the impaired insurer pending action under subdivision (1) of this section.

History. Acts 1989, No. 444, §§ 8, 11; 1997, No. 950, § 1; 2019, No. 520, § 2.

Amendments. The 2019 amendment, in the introductory language, deleted

"may" following "Association" and added "may" following "Commissioner"; in (1), inserted "reissue" and "reissued"; and made stylistic changes.

23-96-112. Insolvent insurers.

(a) If a member insurer is an insolvent insurer, the Arkansas Life and Health Insurance Guaranty Association, in its discretion, shall:

(1) Do both of the following:

(A) Guarantee, assume, reissue, or reinsure, or cause to be guaranteed, assumed, reissued, or reinsured, the policies or contracts of the insolvent insurer or assure payment of the contractual obligations of the insolvent insurer; and

(B) Provide the moneys, pledges, loans, notes, guarantees, or other means as are reasonably necessary to discharge such duties; or

(2) Provide benefits and coverages in accordance with § 23-96-113.

(b)(1) All proceedings in which the insolvent insurer is a party in any court in this state shall be stayed sixty (60) days from the date an order of liquidation, rehabilitation, or conservation is final to permit proper legal action by the association on any matters germane to its powers or duties.

(2) As to judgment under any decision, order, verdict, or finding based on default, the association may apply to have the judgment set aside by the same court that made the judgment and shall be permitted to defend against the suit on the merits.

History. Acts 1989, No. 444, §§ 8, 18; 1997, No. 950, § 1; 2019, No. 520, § 2.

Amendments. The 2019 amendment deleted “either” following “discretion” in the introductory language of (a); added the introductory language of (a)(1); reded-

esignated former (a)(1)(A) and (B) as (a)(1)(A), and redesignated former (a)(1)(C) as (a)(1)(B); inserted “reissue” and “reissued” in (a)(1)(A); redesignated (b) as (b)(1) and (b)(2); and made stylistic changes.

23-96-113. Authority of association when proceeding under § 23-96-111 or § 23-96-112.

(a)(1) When proceeding under § 23-96-111 or § 23-96-112(a)(2), the Arkansas Life and Health Insurance Guaranty Association shall:

(A) With respect to policies and contracts, assure payment of benefits that would have been payable under the policies or contracts of the insolvent insurer, for claims incurred:

(i) With respect to group policies and contracts, not later than the earlier of the next renewal date under the policies or contracts or forty-five (45) days, but in no event less than thirty (30) days, after the date on which the association becomes obligated with respect to the policies and contracts; and

(ii) With respect to nongroup policies, contracts, and annuities, not later than the earlier of the next renewal date, if any, under the policies or contracts, or one (1) year, but in no event less than thirty (30) days, from the date on which the association becomes obligated with respect to the policies or contracts;

(B) Make diligent efforts to provide all known insureds, enrollees, or annuitants, for nongroup policies and contracts, or group policy or contract owners with respect to group policies and contracts thirty (30) days’ notice of the termination, under this subdivision (a)(1), of the benefits provided; and

(C) With respect to nongroup policies and contracts covered by the association, make available to each known insured, enrollee, or annuitant, or owner if other than the insured or annuitant, and with

respect to an individual formerly an insured, enrollee, or annuitant under a group policy or contract who is not eligible for replacement group coverage, make available substitute coverage on an individual basis according to subdivision (a)(2)(A) of this section, if the insureds, enrollees, or annuitants had a right under law or the terminated policy, contract, or annuity to convert coverage to individual coverage or to continue an individual policy, contract, or annuity in force until a specified age or for a specified time, during which the insurer or health maintenance organization had no right unilaterally to make changes in any provisions of the policy, contract, or annuity or had a right only to make changes in premium by class.

(2)(A) In providing the substitute coverage required under subdivision (a)(1)(C) of this section, the association may offer either to reissue the terminated coverage or to issue an alternative policy or contract at actuarially justified rates subject to the prior approval of the Insurance Commissioner.

(B) Alternative or reissued policies or contracts shall be offered without requiring evidence of insurability, and shall not provide for any waiting period or exclusion that would not have applied under the terminated policy or contract.

(C) The association may reinsure any alternative or reissued policy or contract.

(3)(A)(i) Alternative policies or contracts adopted by the association shall be subject to the approval of the commissioner.

(ii) The association may adopt alternative policies or contracts of various types for future issuance without regard to any particular impairment or insolvency.

(B)(i) Alternative policies or contracts shall contain at least the minimum statutory provisions required in this state and provide benefits that shall not be unreasonable in relation to the premium charged.

(ii) The association shall set the premium according to a table of rates which it shall adopt.

(iii) The premium shall reflect the amount of insurance to be provided and the age and class of risk of each insured, but shall not reflect any changes in the health of the insured after the original policy or contract was last underwritten.

(C) Any alternative policy or contract issued by the association shall provide coverage of a type similar to that of the policy or contract issued by the impaired or insolvent insurer, as determined by the association.

(b) When proceeding under § 23-96-111 or § 23-96-112(a) with respect to a policy or contract carrying guaranteed minimum interest rates, the association shall assure the payment or crediting of a rate of interest consistent with § 23-96-106(a)(3).

(c)(1) In carrying out its duties under § 23-96-111 and § 23-96-112(a), the association may:

(A) Subject to approval by a court in this state, impose permanent policy or contract liens in connection with any guarantee, assump-

tion, or reinsurance agreement, if the association finds that the amounts which can be assessed under this chapter are less than the amounts needed to assure full and prompt performance of the association's duties under this chapter or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of such permanent policy or contract liens to be in the public interest; or

(B)(i) Subject to approval by a court in this state, impose temporary moratoriums or liens on payments of cash values and policy loans, or any other right to withdraw funds held in conjunction with policies or contracts, in addition to any contractual provisions for deferral of cash or policy loan value.

(ii) In addition, in the event of a temporary moratorium or moratorium charge imposed by the receivership court on payment of cash values or policy loans, or on any other right to withdraw funds held in conjunction with policies or contracts, out of the assets of the impaired insurer or insolvent insurer, the association may defer the payment of cash values, policy loans, or other rights by the association for the period of the moratorium or moratorium charge imposed by the receivership court, except for claims covered by the association to be paid according to a hardship procedure established by the liquidator or rehabilitator and approved by the receivership court.

(2)(A) A deposit in this state, held pursuant to law or required by the commissioner for the benefit of creditors, including policy or contract owners, not turned over to the domiciliary liquidator upon the entry of a final order of liquidation or order approving a rehabilitation plan of a member insurer domiciled in this state or in a reciprocal state under § 23-68-115 shall be promptly paid to the association.

(B) The association:

(i) Is entitled to retain a portion of any amount so paid to it equal to the percentage determined by dividing the aggregate amount of policy or contract owners' claims related to that insolvency for which the association has provided statutory benefits by the aggregate amount of all policy or contract owners' claims in this state related to that insolvency; and

(ii) Shall remit to the domiciliary receiver the amount so paid to the association and retained under subdivision (c)(2)(B)(i) of this section.

(C) Any amount so paid to the association and retained by it under subdivision (c)(2)(B)(i) of this section shall be treated as a distribution of estate assets under § 23-68-126 or similar provision of the state of domicile of the impaired insurer or insolvent insurer.

(d) In carrying out its duties in connection with guaranteeing, assuming, reissuing, or reinsuring policies or contracts under § 23-96-111 or § 23-96-112(a), the association may issue substitute coverage for a policy or contract that provides an interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or

changes in value by issuing an alternative policy or contract according to the following provisions:

(1) In lieu of the index or other external reference provided for in the original policy or contract, the alternative policy or contract provides for:

(A) A fixed rate;

(B) Payments of dividends with minimum guarantees; or

(C) A different method for calculating interest or changes in value;

(2) There is no requirement for evidence of insurability, waiting period, or other exclusion that would not have applied under the replaced policy or contract; and

(3) The alternative policy or contract is substantially similar to the replaced policy or contract in all other material terms.

History. Acts 1989, No. 444, § 8; 1997, No. 950, § 1; 2001, No. 1603, §§ 58, 59; 2001, No. 1604, § 122; 2019, No. 520, § 2.

Amendments. The 2019 amendment rewrote the section.

23-96-114. Liability for benefits — Assignment or subrogation of rights — Definition.

(a) The benefits that the Arkansas Life and Health Insurance Guaranty Association may become obligated to cover shall in no event exceed the lesser of:

(1) The contractual obligations for which the member insurer is liable or would have been liable if it were not an impaired insurer or insolvent insurer; or

(2) With respect to:

(A) Any one (1) life, regardless of the number of policies or contracts:

(i) Three hundred thousand dollars (\$300,000) in life insurance death benefits or net cash surrender and net cash withdrawal values for life insurance;

(ii) Five hundred thousand dollars (\$500,000) in health benefit plan benefits and five hundred thousand dollars (\$500,000) in health benefits for coverages not defined as health benefit plans, including any net cash surrender and net cash withdrawal values, provided coverage for disability income insurance benefits and long-term care insurance benefits shall not exceed three hundred thousand dollars (\$300,000); or

(iii) Three hundred thousand dollars (\$300,000) in the present value of annuity benefits, including net cash surrender and net cash withdrawal values;

(B) Each individual participating in a governmental retirement benefit plan established under section 401(k), section 403(b), or section 457 of the Internal Revenue Code covered by an unallocated annuity contract or the beneficiaries of each such individual if deceased, in the aggregate three hundred thousand dollars (\$300,000) in present value annuity benefits, including net cash surrender and net cash withdrawal values; or

(C) Each payee of a structured settlement annuity or beneficiary or beneficiaries of the payee if deceased, three hundred thousand dollars (\$300,000) in present value annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal values, if any.

(b)(1) Provided, however, that in no event shall the association be obligated to cover more than:

(A) Three hundred thousand dollars (\$300,000) in benefits in the aggregate with respect to any one (1) life under this section and §§ 23-96-106 and 23-96-107 except with respect to benefits for health benefit plans under subdivision (a)(2)(A)(ii) of this section, in which case the aggregate liability of the association shall not exceed five hundred thousand dollars (\$500,000) with respect to any one (1) individual; or

(B) With respect to one (1) owner of multiple nongroup policies of life insurance, whether the policy or contract owner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees, or other persons, more than one million dollars (\$1,000,000) in benefits, regardless of the number of policies and contracts held by the owner;

(2)(A) With respect to either:

(i) One (1) contract owner provided coverage under § 23-96-107(a)(3)(B); or

(ii) One (1) plan sponsor whose plans own directly or in trust one (1) or more unallocated annuity contracts not included in subdivision (a)(2)(B) of this section, one million dollars (\$1,000,000) in benefits, irrespective of the number of contracts with respect to the contract owner or plan sponsor.

(B) However, in the case in which one (1) or more unallocated annuity contracts are covered contracts under this chapter and are owned by a trust or other entity for the benefit of two (2) or more plan sponsors, coverage shall be afforded by the association if the largest interest in the trust or entity owning the contract or contracts is held by a plan sponsor whose principal place of business is in this state, and in no event shall the association be obligated to cover more than one million dollars (\$1,000,000) in benefits with respect to all of these unallocated contracts.

(3)(A) The limitations stated in this subsection are limitations on the benefits for which the association is obligated before taking into account either its subrogation and assignment rights or the extent to which those benefits could be provided out of the assets of the impaired insurer or insolvent insurer attributable to covered policies.

(B) The costs of the association's obligations under this chapter may be met by the use of assets attributable to covered policies or reimbursed to the association under its subrogation and assignment rights.

(4) For purposes of this chapter, benefits provided by a long-term care rider to a life insurance policy or annuity contract shall be considered the same type of benefits as the base life insurance policy or annuity contract to which it relates.

(5) In performing its obligations to provide coverage under § 23-96-111, the association shall not be required to guarantee, assume, reinsure, reissue, or perform, or cause to be guaranteed, assumed, reinsured, reissued, or performed, the contractual obligations of the insolvent insurer or impaired insurer under a covered policy or covered contract that do not materially affect the economic values or economic benefits of the covered policy or covered contract.

(c)(1)(A) A person receiving benefits under this chapter shall be deemed to have assigned the rights under, and any causes of action against any person for losses arising under, resulting from or otherwise relating to, the covered policy or covered contract to the association to the extent of the benefits received because of this chapter, whether the benefits are payments of or on account of contractual obligations, continuation of coverage, or provision of substitute or alternative policies, contracts, or coverages.

(B) The association may require an assignment to it of the rights and cause of action by any enrollee, payee, policy owner, or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any right or benefits conferred by this chapter upon such person.

(2) The subrogation rights of the association under this subsection shall have the same priority against the assets of the impaired insurer or insolvent insurer as that possessed by the person entitled to receive benefits under this chapter.

(3) In addition to subdivisions (c)(1) and (2) of this section, the association shall have all common law rights of subrogation and any other equitable or legal remedy that would have been available to the impaired insurer or insolvent insurer or owner, beneficiary, enrollee, or payee of a policy or contract with respect to the policy or contracts.

(4) If the preceding provisions of this subsection are invalid or ineffective with respect to any person or claim for any reason, the amount payable by the association with respect to the related covered obligations shall be reduced by the amount realized by any other person with respect to the person or claim that is attributable to the policies or contracts, or portion thereof, covered by the association.

(5) If the association has provided benefits with respect to a covered obligation and a person recovers amounts as to which the association has rights as described in subdivisions (c)(1)-(4) of this section, the person shall pay to the association the portion of the recovery attributable to the policies or contracts, or portion thereof, covered by the association.

(d)(1)(A) For the purpose of carrying out its obligations under this chapter, the association shall be deemed to be a creditor of the impaired insurer or insolvent insurer to the extent of assets attributable to covered policies or contracts reduced by any amounts to which the association is entitled as subrogee under subsection (c) of this section.

(B) Assets of the impaired insurer or insolvent insurer attributable to covered policies or contracts shall be used to continue all

covered policies and pay all contractual obligations of the impaired insurer or insolvent insurer as required by this chapter.

(2) As used in this subsection, “assets of the impaired insurer or insolvent insurer attributable to covered policies or contracts” means that proportion of the assets which the reserves that should have been established for such policies or contracts bear to the reserves that should have been established for all policies of insurance or health benefit plans written by the impaired insurer or insolvent insurer.

(e)(1) As a creditor of the impaired insurer or insolvent insurer as established in subsection (d) of this section and consistent with § 23-68-126, the association and other similar associations shall be entitled to receive a disbursement of assets out of the marshaled assets, from time to time as the assets become available, to reimburse it, as a credit against contractual obligations under this chapter.

(2) If the liquidator has not, within one hundred twenty (120) days of a final determination of insolvency of a member insurer by the receivership court, made an application to the court for the approval of a proposal to disburse assets out of marshaled assets to guaranty associations having obligations because of the insolvency, then the association shall be entitled to make application to the receivership court for approval of its own proposal to disburse these assets.

(f) It is the intent of the General Assembly that the coverage provided through the association for any annuity contract executed under § 11-9-210 shall be the lesser of the contractual obligations of the insurer or one hundred thousand dollars (\$100,000) in the present value of annuity benefits including net cash surrender and net cash withdrawal values as provided in subsection (a) of this section.

(g) It is the intent of the General Assembly that coverage provided by the association for annuity contracts executed under § 11-9-210 shall not be affected by the fact that the annuity payments are sent to the Workers’ Compensation Commission for distribution to the claimants and beneficiaries, and that any funds provided by the association for payment to claimants or beneficiaries for whom annuity contracts are executed under § 11-9-210 shall be sent to the commission for distribution to claimants or beneficiaries.

History. Acts 1989, No. 444, §§ 3, 8, 14; 1991, No. 651, § 2; 1997, No. 950, § 1; 2001, No. 1603, §§ 60-62; 2001, No. 1604, § 123; 2013, No. 456, § 5; 2019, No. 520, § 2.

Amendments. The 2019 amendment inserted “member” in (a)(1); in (a)(2)(A)(ii), substituted “in health benefit plan benefits and five hundred thousand dollars (\$500,000) in health benefits for coverages not defined as health benefit plans” for “in accident and health insurance benefits” and inserted “income” following “disability”; redesignated former (b)(1)(i) and (b)(1)(ii) as (b)(1)(A) and

(b)(1)(B); substituted “health benefit plans” for “basic hospital, medical, and surgical insurance and major medical insurance” in (b)(1)(A); inserted “or contract” following “policy” in (b)(1)(B); added the (b)(2)(A) and (b)(2)(B) designations; substituted “§ 23-96-107(a)(3)(B)” for “§ 23-96-107(b)(2)” in (b)(2)(A); inserted (b)(4), and redesignated former (b)(4) as (b)(5); inserted “reissue” and “reissued” in (b)(5); added the (c)(1)(A) and (c)(1)(B) designations; inserted “policies, contracts, or” in (c)(1)(A); inserted “enrollee” in (c)(1)(B) and (c)(3); inserted “or contracts” in (c)(4) and (c)(5); added the (d)(1)(A) and

(d)(1)(B) designations; inserted "or contracts" in (d)(1)(A) and (d)(1)(B); in (d)(2), substituted "As used in this subsection, 'assets of the impaired insurer or insolvent insurer attributable to covered policies or contracts' means that proportion" for "Assets attributable to covered poli-

cies', as used in this subsection, are that proportion", inserted "or contracts", and inserted "or health benefit plans"; added the (e)(1) and (e)(2) designations; substituted "a member insurer" for "an insurer" in (e)(2); and made stylistic changes.

23-96-115. Assessments — Tax credits.

(a)(1) For the purpose of providing the funds necessary to carry out the powers and duties of the Arkansas Life and Health Insurance Guaranty Association, the Board of Directors of the Arkansas Life and Health Insurance Guaranty Association shall assess the member insurers, separately for each account, at such time and for such amounts as the board finds necessary.

(2) Assessments shall be due not less than thirty (30) days after prior written notice to the member insurers and shall accrue interest at ten percent (10%) per annum on and after the due date.

(b) There shall be two (2) classes of assessments, as follows:

(1)(A) Class A assessments shall be authorized and called for the purpose of meeting administrative and legal costs and other expenses.

(B) Class A assessments may be authorized and called whether or not related to a particular impaired insurer or insolvent insurer; and

(2) Class B assessments shall be authorized and called to the extent necessary to carry out the powers and duties of the association under § 23-96-106(b), §§ 23-96-110 — 23-96-114, and 23-96-120 with regard to an impaired insurer or an insolvent insurer.

(c)(1)(A)(i) The amount of a Class A assessment shall be determined by the board and may be authorized and called on a pro rata or non-pro rata basis.

(ii) If pro rata, the board may provide that the Class A assessment be credited against future Class B assessments.

(B) The amount of a Class B assessment, except for assessments related to long-term care insurance, shall be allocated for assessment purposes between the accounts and among the subaccounts of the life insurance and annuity account under an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard deemed by the board in its sole discretion as being fair and reasonable under the circumstances.

(C)(i) The amount of the Class B assessment for long-term care insurance written by the impaired or insolvent insurer shall be allocated according to the methodology included in the plan of operation and approved by the Insurance Commissioner.

(ii) The methodology shall provide for fifty percent (50%) of the assessment to be allocated to health member insurers and fifty percent (50%) of the assessment to be allocated to life and annuity member insurers.

(2) Class B assessments against member insurers for each account shall be in the proportion that the premiums received on business in this state by each assessed member insurer or policies or contracts covered by each account for the three (3) most recent calendar years for which information is available preceding the year in which the member insurer became insolvent, or in the case of an assessment with respect to an impaired insurer, the three (3) most recent calendar years for which information is available preceding the year in which the member insurer became impaired, bears to such premiums received on business in this state for such calendar years by all assessed member insurers.

(3) Assessments for funds to meet the requirements of the association with respect to an impaired insurer or insolvent insurer shall not be authorized or called until necessary to implement the purpose of this chapter.

(d)(1) Classification of assessments under subsection (b) of this section and computation of assessments under subsection (c) of this section shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(2) The association shall notify each member insurer of its anticipated pro rata share of an authorized assessment not yet called within one hundred eighty (180) days after the assessment is authorized.

(e)(1) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations.

(2) If an assessment against a member insurer is abated or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments stated in this section.

(3) Once the conditions that caused a deferral have been removed or rectified, the member insurer shall pay all assessments that were deferred under a repayment plan approved by the association.

(f)(1)(A) Subject to the provisions of subdivision (f)(1)(B) of this section, the total of all assessments authorized by the association with respect to a member insurer for each subaccount of the life insurance and annuity account and for the health account shall not in any one (1) calendar year exceed two percent (2%) of such insurer's average annual premiums received in this state on the policies and contracts covered by the subaccount or account during the three (3) calendar years preceding the year in which the member insurer became an impaired insurer or insolvent insurer.

(B) If two (2) or more assessments are authorized in one (1) calendar year with respect to member insurers that become impaired or insolvent in different calendar years, the average annual premiums for purposes of the aggregate assessment percentage limitation referenced in subdivision (f)(1)(A) of this section shall be equal and limited to the higher of the three-year average annual premiums for the applicable subaccount or account as calculated under this section.

(C) If the maximum assessment, together with the other assets of the association in any account, does not provide in any one (1) year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by this chapter.

(2) The board may provide in the plan of operation a method of allocating funds among claims, whether relating to one (1) or more impaired insurers or insolvent insurers, when the maximum assessment will be insufficient to cover anticipated claims.

(3) If the maximum assessment for any subaccount of the life and annuity account in any one (1) year does not provide an amount sufficient to carry out the responsibilities of the association, then pursuant to subdivision (c)(2) of this section, the board shall assess the other subaccounts of the life and annuity account for the necessary additional amount, subject to the maximum stated in subdivision (f)(1) of this section.

(g)(1) The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each member insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that account, including assets accruing from assignment, subrogation, net realized gains, and income from investments.

(2) A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses claims.

(h) It shall be proper for any member insurer, in determining its premium rates and policyholder dividends as to any kind of insurance or health maintenance organization business within the scope of this chapter, to consider the amount reasonably necessary to meet its assessment obligations under this chapter.

(i)(1) The association shall issue to each member insurer paying an assessment under this chapter, other than Class A assessment, a certificate of contribution, in a form prescribed by the commissioner, for the amount of the assessment so paid.

(2) All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue.

(3) A certificate of contribution may be shown by the member insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the commissioner may approve.

(j)(1)(A) A member insurer may offset against its premium tax liability to this state an assessment described in subsection (i) of this section to the extent of twenty percent (20%) of the amount of the assessment for each of the five (5) calendar years following the year in which the assessment was paid.

(B) If a member insurer should cease doing business, all uncredited assessments may be credited against its premium tax liability for the year it ceases doing business.

(2)(A)(i) A member insurer that is exempt from taxes referenced in subdivision (j)(1) of this section may recoup its assessments by a surcharge on its premiums in a sum reasonably calculated to recoup the assessments over a reasonable period of time, as approved by the commissioner.

(ii) Amounts recouped shall not be considered premiums for any other purpose, including the computation of gross premium tax, the medical loss ratio, or agent commission.

(iii) If a member insurer collects excess surcharges, the member insurer shall remit the excess amount to the association, and the excess amount shall be applied to reduce future assessments in the appropriate amount.

(B) Any sums which are acquired by refund, under subsection (g) of this section, from the association by member insurers and which have theretofore been offset against premium taxes as provided in subdivision (j)(1)(A) of this section, shall be paid by such insurers to this state as the tax authorities may require.

(C) The association shall notify the commissioner that the refunds have been made.

History. Acts 1989, No. 444, §§ 9, 13; 1997, No. 950, § 1; 2001, No. 1603, § 63; 2019, No. 520, § 2.

Amendments. The 2019 amendment added the (b)(1)(A), (b)(1)(B), (c)(1)(A)(i), and (c)(1)(A)(ii) designations; in (c)(1)(A)(ii), deleted “of directors” following “board”, substituted “the Class A assessment be credited” for “it be credited” and deleted the second sentence; in (c)(1)(B), inserted “except for assessments related to long-term care insurance”, substituted “between the accounts” for “among the accounts”, and inserted “and among the subaccounts of the life insurance and annuity account”; added (c)(1)(C); inserted “member” twice in

(c)(2); added the (d)(1), (d)(2), and (e)(1) through (e)(3) designations; in (f)(1)(A), deleted “accident and” preceding “health account” and inserted “member” preceding the second occurrence of “insurer”; inserted “member” preceding “insurers” in (f)(1)(B); added the (g)(1) and (g)(2) designations; inserted “member” preceding “insurer” in (g)(1); inserted “or health maintenance organization business” in (h); inserted “member” in (i)(1) and (i)(3); added (j)(2)(A)(i) and redesignated former (j)(2)(A) and (j)(2)(B) as (j)(2)(B) and (j)(2)(C); deleted “in such manner” following “state” in (j)(2)(B); and made stylistic changes.

23-96-116. Plan of operation.

(a)(1)(A) The Arkansas Life and Health Insurance Guaranty Association shall submit to the Insurance Commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the Arkansas Life and Health Insurance Guaranty Association.

(B) The plan of operation and any amendments to the plan of operation shall become effective upon the commissioner’s written approval or unless he or she has not disapproved it within thirty (30) days.

(2)(A) If the Arkansas Life and Health Insurance Guaranty Association fails to submit a suitable plan of operation within one hundred twenty (120) days following March 9, 1989, or if at any time

thereafter the Arkansas Life and Health Insurance Guaranty Association fails to submit suitable amendments to the plan of operation, the commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate this chapter.

(B) Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the Arkansas Life and Health Insurance Guaranty Association and approved by the commissioner.

(b) All member insurers shall comply with the plan of operation.

(c) In addition to other requirements enumerated in this chapter, the plan of operation shall:

(1) Establish procedures for handling the assets of the Arkansas Life and Health Insurance Guaranty Association;

(2) Establish the amount and method of reimbursing members of the Board of Directors of the Arkansas Life and Health Insurance Guaranty Association under § 23-96-109(b);

(3) Establish regular places and times for meetings, including telephone conference calls of the board;

(4) Establish procedures for records to be kept of all financial transactions of the Arkansas Life and Health Insurance Guaranty Association, its agents, and the board;

(5) Establish the procedures whereby selections for the board will be made and submitted to the commissioner;

(6) Establish any additional procedures for assessments under § 23-96-115; and

(7) Contain additional provisions necessary or proper for the execution of the powers and duties of the Arkansas Life and Health Insurance Guaranty Association.

(d)(1)(A) The plan of operation may provide that any or all powers and duties of the Arkansas Life and Health Insurance Guaranty Association, except those under § 23-96-114(c)(3) and § 23-96-115, may be delegated to the State Insurance Department or to a corporation, association, organization, or other entity which performs or will perform functions similar to those of the Arkansas Life and Health Insurance Guaranty Association, or its equivalent, in two (2) or more states.

(B) Such a corporation, association, organization, or other entity, including, as applicable, the department, shall be reimbursed for any payments made on behalf of the Arkansas Life and Health Insurance Guaranty Association and shall be paid for its performance of any function of the Arkansas Life and Health Insurance Guaranty Association.

(2) A delegation under this subsection shall take effect only with the approval of both the board and the commissioner, and may be made only to a corporation, association, organization or other entity, including the department, which extends protection not substantially less favorable and effective than that provided by this chapter.

History. Acts 1989, No. 444, § 10; 1997, No. 950, § 1; 2019, No. 520, § 2.

Amendments. The 2019 amendment added the (a)(1)(A), (a)(1)(B), (a)(2)(A), and (a)(2)(B) designations; substituted “to the plan of operation shall become” for “thereto shall become” in (a)(1)(B); in (a)(2)(A), inserted “of operation” following the second occurrence of “plan” and de-

leted “effectuate the provisions of” preceding “this chapter”; substituted “In addition to other requirements enumerated in this chapter, the plan of operation shall” for “The plan of operation shall, in addition to requirements enumerated elsewhere in this chapter” in (c); and added the (d)(1)(A) and (d)(1)(B) designations.

23-96-117. Detection and prevention of insolvencies or impairments.

To aid in the detection and prevention of member insurer insolvencies or impairments:

(1) The Insurance Commissioner shall:

(A)(i) Notify the commissioners of all the other states, territories of the United States, and the District of Columbia when he or she takes any of the following actions against a member insurer:

(a) Revocation of license;

(b) Suspension of license; or

(c) Makes any formal order that the member insurer restrict its premium writing, obtain additional contributions to surplus, withdraw from the state, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of policy owners, contract owners, certificate holders, or creditors.

(ii) The notice shall be mailed to all commissioners within thirty (30) days following the action taken or the date on which the action occurs;

(B)(i) Report to the Board of Directors of the Arkansas Life and Health Insurance Guaranty Association when he or she has taken any of the actions stated in subdivision (1)(A) of this section or has received a report from any other commissioner indicating that any such action has been taken in another state.

(ii) The report to the board shall contain all significant details of the action taken or the report received from another commissioner;

(C) Report to the board when he or she has reasonable cause to believe from any examination, whether completed or in process, of any member insurer that the insurer may be an impaired insurer or insolvent insurer; and

(D)(i) Furnish to the board the National Association of Insurance Commissioners' Insurance Regulatory Information System (IRIS) ratios and listings of companies not included in the ratios developed by the National Association of Insurance Commissioners, and the board may use the information contained therein in carrying out its duties and responsibilities under this section.

(ii) The report and the information contained therein shall be kept confidential by the board until such time as made public by the Insurance Commissioner or other lawful authority;

(2) The Insurance Commissioner may seek the advice and recommendations of the board concerning any matter affecting his or her

duties and responsibilities regarding the financial condition of member insurers, insurers, or health maintenance organizations seeking admission to transact business in this state; and

(3) Upon majority vote, the board may:

(A)(i) Make reports and recommendations to the Insurance Commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer or germane to the solvency of any insurer or health maintenance organization seeking to do business in this state.

(ii) The reports and recommendations are not public documents;

(B) Notify the Insurance Commissioner of any information indicating any member insurer may be an impaired insurer or insolvent insurer; and

(C) Make recommendations to the Insurance Commissioner for the detection and prevention of member insurer insolvencies.

History. Acts 1989, No. 444, § 12; 1997, No. 950, § 1; 2019, No. 520, § 2.

Amendments. The 2019 amendment inserted “member” in the introductory language; substituted “The Insurance Commissioner shall” for “It shall be the duty of the Insurance Commissioner” in the introductory language of (1); in

(1)(A)(i)(c), substituted “the member insurer restrict” for “such company restrict” and inserted “contract owners, certificate holders”; in (2), substituted “insurers, or health maintenance organizations” for “and companies” and substituted “business” for “insurance business”; rewrote (3); and made stylistic changes.

23-96-118. Duties and powers of Insurance Commissioner.

(a) In addition to the duties and powers enumerated elsewhere in this chapter:

(1) The Insurance Commissioner shall:

(A) Upon request of the Board of Directors of the Arkansas Life and Health Insurance Guaranty Association, provide the Arkansas Life and Health Insurance Guaranty Association with a statement of the premiums in this and any other appropriate states for each member insurer;

(B)(i) When an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time.

(ii) Notice to the impaired insurer shall constitute notice to its shareholders, if any.

(iii) The failure of the impaired insurer to promptly comply with such a demand shall not excuse the association from the performance of its powers and duties under this chapter; and

(C) In any liquidation or rehabilitation proceeding involving a domestic member insurer, be appointed as the liquidator or rehabilitator; and

(2)(A) The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact business in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation.

(B)(i) As an alternative, the commissioner may levy a forfeiture on any member insurer that fails to pay an assessment when due.

(ii) The forfeiture shall not exceed five percent (5%) of the unpaid assessment per month, but a forfeiture shall not be less than one hundred dollars (\$100) per month.

(b)(1) A final action of the board or the association may be appealed to the commissioner by any member insurer if the appeal is taken within sixty (60) days of its receipt of notice of the final action's being appealed.

(2) If a member company is appealing an assessment, the amount assessed shall be paid to the association and available to meet association obligations during the pendency of an appeal.

(3) If the appeal on the assessment is upheld, the amount paid in error or excess shall be returned to the member insurer.

(4) Any final action or order of the commissioner shall be subject to judicial review in a court of competent jurisdiction according to the laws of this state that apply to actions or orders of the commissioner.

(c) If the association fails to act within a reasonable period of time as provided in § 23-96-112(a) and §§ 23-96-113 and 23-96-120, the commissioner shall have the powers and duties of the association under this chapter with respect to impaired insurers or insolvent insurers.

History. Acts 1989, No. 444, §§ 8, 11; 1997, No. 950, § 1; 2019, No. 520, § 2.

Amendments. The 2019 amendment substituted "Insurance Commissioner" for "commissioner" in the section heading; inserted "impaired" in (a)(1)(B)(iii); inserted "member" in (a)(1)(C); substituted "transact business" for "transact insur-

ance" in (a)(2)(A); substituted "but a forfeiture shall not be less" for "but no forfeiture shall be less" in (a)(2)(B)(ii); added the (b)(1) through (b)(4) designations; substituted "jurisdiction according to the laws" for "jurisdiction in accordance with the laws" in (b)(4); and made stylistic changes.

23-96-119. Distributions of ownership rights.

(a)(1)(A) Before the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the Arkansas Life and Health Insurance Guaranty Association, the shareholders, contract owners, certificate holders, enrollees, and policy owners of the insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of the insolvent insurer.

(B) In such a determination, consideration shall be given to the welfare of the policy owners, contract owners, certificate holders, and enrollees of the continuing or successor member insurer.

(2) A distribution to stockholders, if any, of an impaired insurer or insolvent insurer shall not be made until the total amount of valid claims of the association with interest thereon for funds expended in carrying out its powers and duties under §§ 23-96-111 — 23-96-114 and 23-96-120 with respect to the member insurer has been fully recovered by the association.

(b)(1) If an order for liquidation or rehabilitation of a member insurer domiciled in this state has been entered, the receiver appointed under the order shall have a right to recover on behalf of the member insurer, from any affiliate that controlled it, the amount of distributions, other than stock dividends paid by the member insurer on its capital stock, made at any time during the five (5) years preceding the petition for liquidation or rehabilitation subject to the limitations of subdivisions (b)(2)-(4) of this section.

(2) Such a distribution is not recoverable if the member insurer shows that, when paid, the distribution was lawful and reasonable and that the member insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the member insurer to fulfill its contractual obligations.

(3)(A) Any person that was an affiliate that controlled the member insurer at the time the distributions were paid shall be liable up to the amount of distributions the person received.

(B) Any person that was an affiliate that controlled the member insurer at the time the distributions were declared shall be liable up to the amount of distributions the person would have received if the distributions had been paid immediately.

(C) If two (2) or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.

(4) The maximum amount recoverable under this subsection shall be the amount needed in excess of all other available assets of the insolvent insurer to pay the contractual obligations of the insolvent insurer.

(5) If any person liable under subdivision (b)(3) of this section is insolvent, all of the affiliates that controlled the person at the time the distribution was paid shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

History. Acts 1989, No. 444, § 14; 1997, No. 950, § 1; 2019, No. 520, § 2.

Amendments. The 2019 amendment added the (a)(1)(A) and (a)(1)(B) designations; inserted "contract owners, certificate holders, enrollees" in (a)(1)(A) and made a similar change in (a)(1)(B); added "member" in (a)(1)(B); in (a)(2), substi-

tuted "the member insurer" for "such an insurer"; inserted "member" three times in (b)(1) and (b)(2); inserted "member" in (b)(3)(A) and (b)(3)(B); substituted "all of the affiliates that controlled the person" for "all its affiliates that controlled it" in (b)(5); and made stylistic changes.

23-96-120. Payment of premiums.

(a) Nonpayment of premiums within thirty-one (31) days after the date required under the terms of any guaranteed, assumed, alternative, or reissued policy or contract or substitute coverage shall terminate the Arkansas Life and Health Insurance Guaranty Association's obligations under the policy, contract, or coverage under this chapter with respect to the policy, contract, or coverage, except with respect to any

claims incurred or any net cash surrender value which may be due under this chapter.

(b) Premiums due for coverage after entry of an order of liquidation of an insolvent insurer shall belong to and be payable at the direction of the association; and the association shall be liable for unearned premiums due to policy owners or contract owners arising after the entry of the order.

History. Acts 1989, No. 444, § 8; 1997, No. 950, § 1; 2019, No. 520, § 2.

Amendments. The 2019 amendment, in (a), substituted “the policy, contract, or

coverage” for “such policy or coverage” twice, and substituted “due under this chapter” for “due in accordance with the provisions of this chapter”.

23-96-121. Reissuance of terminated coverage.

(a) If the Arkansas Life and Health Insurance Guaranty Association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy or contract, the premium shall be actuarially justified and set by the association according to the amount of insurance or coverage provided and the age and class of risk, subject to prior approval of the Insurance Commissioner.

(b) The association’s obligations with respect to coverage under any policy or contract of the impaired insurer or insolvent insurer or under any reissued or alternative policy or contract shall cease on the date the coverage or policy or contract is replaced by another similar policy or contract by the policy or contract owner, the insured, the enrollee, or the association.

History. Acts 1989, No. 444, § 8; 1997, No. 950, § 1; 2019, No. 520, § 2.

Amendments. The 2019 amendment, in (a), inserted “or contract”, inserted “actuarially justified and”, substituted “according to the amount” for “in accordance

with the amount”, inserted “or coverage”, inserted “prior”, and substituted “Insurance Commissioner” for “domiciliary commissioner and the receivership court”; and, in (b), inserted “or contract” throughout and inserted “the enrollee”.

CHAPTER 97

LONG-TERM CARE INSURANCE

SUBCHAPTER.

3. LONG-TERM CARE INSURANCE ACT OF 2005.

SUBCHAPTER 3 — LONG-TERM CARE INSURANCE ACT OF 2005

SECTION.

23-97-303. Scope.

23-97-307. Disclosure and performance standards for long-term care insurance.

SECTION.

23-97-314. Delivery of policy and summary — Disclosures.

23-97-320. Authority to promulgate rules.

23-97-303. Scope.

(a) The requirements of this subchapter apply to policies delivered or issued for delivery in this state on or after August 12, 2005.

(b) Except as provided in subsection (c) of this section, this subchapter is not intended to supersede the obligations to comply with other applicable insurance laws that do not conflict with this subchapter.

(c) Laws and rules designed and intended to apply to Medicare supplement insurance policies shall not be applied to long-term care insurance.

History. Acts 2005, No. 1697, § 31; 2019, No. 315, § 2789.

Amendments. The 2019 amendment substituted “rules” for “regulations” in (c).

23-97-307. Disclosure and performance standards for long-term care insurance.

(a) The Insurance Commissioner may adopt rules for long-term care insurance that include, but are not limited to, standards for full and fair disclosure addressing:

- (1) The manner, content, and required disclosures for the sale of long-term care insurance policies;
- (2) Terms of renewability;
- (3) Initial and subsequent conditions of eligibility;
- (4) Nonduplication of coverage provisions;
- (5) Coverage of dependents;
- (6) Preexisting conditions;
- (7) Termination of insurance;
- (8) Continuation or conversion of coverage;
- (9) Probationary periods;
- (10) Limitations, exceptions, reductions, and elimination periods;
- (11) Requirements for replacement;
- (12) Recurrent conditions; and
- (13) Definitions of terms.

(b) No long-term care insurance policy shall:

(1) Be cancelled, not renewed, or otherwise terminated because of age or the deterioration of the mental or physical health of the insured individual or certificate holder;

(2) Contain a provision establishing a new waiting period in the event existing coverage is converted to or replaced by a new or other form of coverage within the same company, except with respect to an increase in benefits voluntarily selected by the insured individual or group policyholder; or

(3) Provide coverage for skilled nursing care only or provide significantly more coverage for skilled care within a facility than coverage for lower levels of care.

History. Acts 2005, No. 1697, § 31; substituted “rules” for “regulations” in the 2019, No. 315, § 2790. introductory language of (a).

Amendments. The 2019 amendment

23-97-314. Delivery of policy and summary — Disclosures.

(a) If an application for a long-term care insurance contract or certificate is approved, the issuer shall deliver the contract or certificate of insurance to the applicant no later than thirty (30) days after the date of approval.

(b)(1) At the time of the delivery of the policy, a policy summary shall be delivered for an individual life insurance policy that provides long-term care benefits within the policy or by rider.

(2) In the case of direct response solicitations, the insurer shall deliver the policy summary upon the applicant’s request or at the time of policy delivery, whichever first occurs.

(3) The summary shall comply with all applicable requirements and include:

(A) An explanation of how the long-term care benefit interacts with other components of the policy, including deductions from death benefits;

(B) An illustration of the amount of benefits, the length of benefit, and the guaranteed lifetime benefits, if any, for each covered person;

(C) Any exclusions, reductions, and limitations on long-term care benefits; and

(D) A statement that any long-term care inflation protection option, if required by rules of the Insurance Commissioner, is not available under the policy.

(4) If applicable to the policy type, the summary shall also include:

(A) A disclosure of the effects of exercising other rights under the policy;

(B) A disclosure of guarantees related to long-term care costs of insurance charges; and

(C) Current and projected maximum lifetime benefits.

History. Acts 2005, No. 1697, § 31; deleted “and regulations” following “rules” 2019, No. 315, § 2791. in (b)(3)(D).

Amendments. The 2019 amendment

23-97-320. Authority to promulgate rules.

The Insurance Commissioner shall issue rules for long-term care insurance to:

(1) Promote premium adequacy;

(2) Protect the policyholder in the event of substantial rate increases; and

(3) Establish minimum standards for:

(A) Marketing practices;

(B) Agent compensation;

(C) Agent testing;

- (D) Penalties; and
- (E) Reporting practices.

History. Acts 2005, No. 1697, § 31; substituted “rules” for “regulations” in the 2019, No. 315, § 2792. section heading.

Amendments. The 2019 amendment

CHAPTER 98

MINIMUM BASIC BENEFIT POLICIES AND
SUBSCRIPTION CONTRACTS

SECTION.	SECTION.
23-98-102. Definitions.	23-98-106. Minimum basic benefits.
23-98-103. Notices and hearings before adopting rules.	23-98-108. Notice of minimum basic benefit policies — Payroll deduction.
23-98-104. Formation of trusts of qualified individuals.	23-98-110. Approval of forms and rates.
23-98-105. Issuance of minimum basic benefit policies permitted — Applicability.	

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

23-98-102. Definitions.

As used in this chapter:

- (1) “Children’s preventive healthcare services” means physician-delivered or physician-supervised services for eligible dependents from birth through age six (6), with periodic physical examinations including medical history, physical examination, developmental assessment, anticipatory guidance and appropriate immunizations, and laboratory tests, in keeping with prevailing medical standards for the purposes of this section;
- (2) “COBRA” means the “Consolidated Omnibus Budget Reconciliation Act of 1985”;
- (3) “Commissioner” means the Insurance Commissioner;

(4) “Insured” means any individual or group insured under a minimum basic benefit policy issued pursuant to the provisions of this chapter;

(5) “Insurer” means an insurer, health maintenance organization, hospital, or medical service corporation offering a minimum basic benefit policy pursuant to this chapter;

(6) “Loss ratio” means the percentage derived by dividing incurred claims, both reported and not reported, by total premiums earned;

(7) “Minimum basic benefit policy” means a policy or subscription contract which an insurer may choose to offer to a qualified individual, qualified family, or qualified group pursuant to the provisions of this chapter;

(8) “Periodic physical examinations” means the routine tests and procedures for the purpose of detection of abnormalities or malfunctions of bodily systems and parts according to accepted medical practice;

(9) “Permitted coverages” means health or hospitalization coverage under a minimum basic benefit policy issued pursuant to this chapter, under Medicaid, Medicare, limited benefit policies as defined by rules of the commissioner, the Consolidated Omnibus Budget Reconciliation Act of 1985, or the provisions of § 23-86-114, § 23-86-115, or § 23-86-116;

(10) “Qualified family” means individuals all of whom are qualified individuals and all of whom are related by blood, marriage, or adoption;

(11) “Qualified group” means a group, organized other than pursuant to § 23-98-109, in which each covered individual, or covered dependent of such a covered individual, within the group is a qualified individual. A qualified group may include less than all employees of an employer;

(12)(A) “Qualified individual” means an individual who is employed in or is a resident of Arkansas and who has been without health insurance coverage, other than permitted coverage, for the twelve-month period immediately preceding the effective date of a minimum basic benefit policy issued pursuant to this chapter and who meets reasonable underwriting standards.

(B) However, children newborn to or adopted by an insured after the effective date of a policy issued to the insured pursuant to this chapter which covers the insured and members of the insured’s family, shall be considered qualified individuals; and

(13) “Qualified trust” means a group organized pursuant to § 23-98-104 in which each covered individual, or covered dependent of such a covered individual, within the group is a qualified individual.

History. Acts 1991, No. 238, § 2; 2019, deleted “and regulations” following “rules” No. 315, § 2793. in (9).

Amendments. The 2019 amendment

23-98-103. Notices and hearings before adopting rules.

The Insurance Commissioner shall provide notice and conduct hearings in accordance with the Arkansas Administrative Procedure Act,

§ 25-15-201 et seq., before adopting any rules of general applicability to minimum basic benefit policies to be issued pursuant to this chapter.

History. Acts 1991, No. 238, § 10; substituted “rules” for “regulations” in the 2019, No. 315, § 2794. section heading and in the text.

Amendments. The 2019 amendment

23-98-104. Formation of trusts of qualified individuals.

Solely for purposes of obtaining minimum basic benefit policies pursuant to the authority granted by this chapter, trusts may be formed composed of qualified individuals, qualified families, or qualified groups. Each trust may serve as a master policyholder. Members of qualified groups and members of such trusts may join together solely for the purpose of obtaining health insurance coverage under the provisions of this chapter. The Insurance Commissioner shall adopt rules governing the formation and operation of the trust to assure the protection of persons purchasing policies pursuant to this chapter.

History. Acts 1991, No. 238, § 4; 2019, deleted “and regulations” following “rules” No. 315, § 2795. in the text.

Amendments. The 2019 amendment

23-98-105. Issuance of minimum basic benefit policies permitted — Applicability.

Insurers are authorized to issue minimum basic benefit policies pursuant to and in compliance with the provisions of this chapter to qualified individuals, qualified families, qualified trusts, and qualified groups. This chapter shall apply only to those minimum basic benefit policies issued under this chapter and rules issued by the Insurance Commissioner pursuant to the authority of this chapter. Nothing in this chapter shall be deemed to add to, detract from, or in any manner apply to policies, subscription contracts, benefits, or related activities under any other statutory or regulatory authorities.

History. Acts 1991, No. 238, § 3; 2019, substituted “rules” for “regulations” in the No. 315, § 2796. text.

Amendments. The 2019 amendment

23-98-106. Minimum basic benefits.

(a) Minimum basic benefit policies offered under the authority of this chapter shall provide basic levels of primary, preventive, and hospital care, including, but not limited to, the following:

(1) Fifteen (15) days of inpatient hospitalization coverage per policy year;

(2)(A) As an option, prenatal care, including:

(i) One (1) prenatal office visit per month during the first two (2) trimesters of pregnancy;

(ii) Two (2) office visits per month during the seventh and eighth months of pregnancy; and

(iii) One (1) office visit per week during the ninth month until term.

(B) Coverage for each office visit shall include:

(i) Necessary and appropriate screening, including history, physical examination, and such laboratory and diagnostic procedures as may be deemed appropriate by the physician based upon recognized medical criteria for the risk group of which the patient is a member; and

(ii) Such prenatal counseling as the physician deems appropriate;

(3) As an option, obstetrical care, including physicians' services, delivery room, and other medically necessary hospital services;

(4)(A) As an option, coverage for children's preventive healthcare services on a periodic basis from birth through age six (6), including thirteen (13) visits at approximately the following age intervals:

(i) Birth;

(ii) Two (2) months;

(iii) Four (4) months;

(iv) Six (6) months;

(v) Nine (9) months;

(vi) Twelve (12) months;

(vii) Fifteen (15) months;

(viii) Eighteen (18) months;

(ix) Two (2) years;

(x) Three (3) years;

(xi) Four (4) years;

(xii) Five (5) years; and

(xiii) Six (6) years.

(B) The option may provide that children's preventive healthcare services which are rendered during a periodic review shall:

(i) Only be covered to the extent that these services are provided by or under the supervision of a single physician during the course of one (1) visit; and

(ii) Be reimbursed at levels established by the Insurance Commissioner which shall not exceed those established for the same services under the Medicaid program in the State of Arkansas.

(C) Copayment and deductible amounts shall not be greater than copayments and deductibles imposed for other physician's office visits;

(5) A basic level of primary and preventive care, including two (2) office visits per calendar year for covered services rendered by a provider licensed to provide the services rendered;

(6) Annual, lifetime, or other benefit limits in amounts not less than may be established by the commissioner but which initially shall be not less than one hundred thousand dollars (\$100,000) as an annual benefit and two hundred fifty thousand dollars (\$250,000) as a lifetime benefit;

(7) Such waiting period, if any, as the commissioner may establish for transferring from any minimum basic benefit policy issued under this chapter by one (1) insurer to a minimum basic benefit policy issued under this chapter by another insurer;

(8)(A) Every policy issued pursuant to this chapter which covers the insured and members of the insured's family shall include coverage for newborn infant children of the insured from the moment of birth, and for adopted minors from the date of the interlocutory decree of adoption.

(B) The insurer may require that the insured give notice to his or her insurer of any newborn children within ninety (90) days following the birth of the newborn infant and of any adopted child within sixty (60) days of the date the insured has filed a petition to adopt. The coverage of newborn children or adopted children shall not be less than the same as is provided for other members of the insured's family; and

(9) Such provisions, if any, as the commissioner may require, for:

(A) An annual or other deductible or equivalent;

(B) Patient copayments, including a differential, if any, for nonpreferred providers;

(C) Annual stop loss amounts;

(D) Continuation of coverage;

(E) Conversion;

(F) Replacement of prior carrier's coverage;

(G) Exclusionary periods for preexisting conditions; and

(H) Continuation of benefits.

(b) Notwithstanding the provisions of subsection (a) of this section, the commissioner shall consider the cost impact and essential nature of each of such requirements as well as the competitive impact of such requirements, and may vary any of such requirements, add, fix, or remove requirements or establish alternative benefit methods to encourage participation of insurers in a manner consistent with meeting the goal of providing minimum basic health services at an affordable price to those eligible for coverage under this chapter.

(c) The commissioner may authorize a waiver of any of the policy provisions required pursuant to this section or the commissioner's authority under this section in order to authorize a minimum basic benefit policy to be issued as a Medicaid supplement without requiring redundant coverage.

(d)(1) Any minimum basic benefit policy issued pursuant to the provisions of this chapter may be issued without the provision of the benefits or requirements mandated by the following statutes to be included in or offered to be included in accident and health insurance or health maintenance organization policies or subscription contracts or rules issued pursuant to such statutes: §§ 23-79-129, 23-79-130, 23-79-137, 23-79-139 — 23-79-141, § 23-85-131(b), § 23-85-137, § 23-86-108(4), § 23-86-108(7), §§ 23-86-113 — 23-86-116, and 23-86-118.

(2) However, nothing in this chapter shall:

(A) Reduce any professional scope of practice as defined in the licensure law for any healthcare provider;

(B) Authorize any discrimination not permitted under Arkansas law in payment or reimbursement for services; or

(C) Be construed to repeal or eliminate the application of the Arkansas freedom of choice legislation, § 23-79-114, or coordination of benefit statutes or rules to policies issued pursuant to this chapter.

History. Acts 1991, No. 238, § 5; 2001, substituted “rules” for “regulations” in No. 1603, § 65; 2019, No. 315, § 2797. (d)(1) and (d)(2)(C).

Amendments. The 2019 amendment

23-98-108. Notice of minimum basic benefit policies — Payroll deduction.

(a) Those employers in the State of Arkansas that do not provide a portion of the cost of health insurance for their employees shall provide notice to their employees of the existence of the minimum basic benefit policy authorized by this chapter. The notice shall be in a form prepared by the Insurance Commissioner and may be provided to employees by posting at the place of employment or in any other reasonable manner.

(b) Any insured, or dependent of an insured, under this chapter may provide written request to his or her employer to withhold the amount of premium on a minimum basic benefit policy from his or her paycheck along with written instructions for remittance of the premium, in which case the employer shall withhold the premium and remit the premium payment to the insurer, unless to do so would require the employer to make remittances to more than three (3) different insurers.

(c) No employer required to make a remittance of a premium under the provisions of this chapter shall be required to make such remittances more often than one (1) time per month.

(d) Nothing in this chapter shall be construed to require or mandate in any way that an employer provide or pay any portion of the cost of a minimum basic benefit policy issued under this chapter.

(e) Upon request by the commissioner, the Division of Workforce Services is authorized to provide a copy of the form of notice prepared by the commissioner to employers as the commissioner and the division may agree upon.

History. Acts 1991, No. 238, § 6; 2019, in (e), substituted “Division of Workforce Services” for “Department of Workforce No. 910, § 612.

Amendments. The 2019 amendment, Services” and “division” for “department”.

23-98-110. Approval of forms and rates.

(a) All minimum basic benefit policy forms, including applications, enrollment forms, policies, certificates, evidences of coverage, riders, amendments, endorsements, disclosure forms, and marketing communications used in connection with the sale or advertisement of a minimum basic benefit policy shall be submitted to the Insurance Commissioner for approval in the same manner as required by § 23-79-109(a) or § 23-76-112(a).

(b) Minimum basic benefit policies are subject to the filing and approval statutes and rules of the state. No rate shall be considered reasonable nor shall it be approved unless:

(1) It is based upon a pool, community rating, or other rating formula acceptable to the commissioner; and

(2)(A) As to individual policies and policies issued to qualified trusts, it is likely to produce a loss ratio, as certified by a qualified actuary, which is acceptable to the commissioner, but in no event shall such a loss ratio be less than sixty-five percent (65%).

(B) However, the commissioner may set a minimum loss ratio for group policies issued pursuant to this chapter if the commissioner determines that inequitable or unfair treatment of policyholders would otherwise result.

(c) To the extent that an insurer has a surplus in a given year which has been generated on minimum basic benefit policies issued pursuant to this chapter to a qualified group by a loss ratio of less than seventy-five percent (75%) or issued pursuant to this chapter to qualified individuals, qualified families, or qualified trusts by a loss ratio of less than sixty-five percent (65%), that surplus shall be taken into consideration in setting rates in following years in such manner as to benefit the holders of such minimum basic benefit policies.

(d)(1) The commissioner may require that as to each minimum basic benefit policy approved, the insurer provide a statement of the portion of the rate or premium applicable to the minimum basic benefit policy coverage required by this chapter, or the commissioner pursuant to this chapter, or such other information as the commissioner may require so that prospective purchasers of policies pursuant to this chapter may have an ability to make a direct comparison of the cost of the minimum basic benefits within policies of the same class issued by different insurers.

(2) The commissioner may include rate comparison or other cost information in the form of notice which may be provided by the commissioner to employers pursuant to this chapter.

History. Acts 1991, No. 238, § 9; 2019, substituted “and rules” for “rules and No. 315, § 2798. regulations” in the introductory language

Amendments. The 2019 amendment of (b).

CHAPTER 99

HEALTHCARE PROVIDERS

SUBCHAPTER.

2. PATIENT PROTECTION ACT OF 1995.
4. ARKANSAS HEALTH CARE CONSUMER ACT.
5. ARKANSAS MENTAL HEALTH PARITY ACT OF 2009.
6. DENTAL POINT OF SERVICE ACT.
7. GRIEVANCE SYSTEMS AND QUALITY ASSESSMENT AND IMPROVEMENT SYSTEMS.
8. ENFORCEMENT OF ANY WILLING PROVIDER LAWS.
9. LIMITATION ON FINANCIAL PENALTIES IN ALTERNATIVE PAYMENT SYSTEMS.

SUBCHAPTER

- 10. VISION CARE PLAN ACT OF 2015.
- 11. PRIOR AUTHORIZATION TRANSPARENCY ACT.
- 12. HEALTHCARE CONTRACTING SIMPLIFICATION ACT.
- 13. ASSIGNMENT OF BENEFITS.

SUBCHAPTER 2 — PATIENT PROTECTION ACT OF 1995

SECTION.

- 23-99-203. Definitions.
- 23-99-204. Terms of health benefit plan.
- 23-99-206. Violations.

SECTION.

- 23-99-210. Healthcare provider — Adverse professional review action.

Effective Dates. Acts 2019, No. 996, § 2: Apr. 15, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that some healthcare insurers exclude a physician as a participating healthcare provider based on an adverse peer review action; that this is unfair if the adverse peer review action is tainted by conflicts of interest or is directed at conduct that did not violate the standard of care; and that this act is immediately necessary to protect the right of a patient to see the

healthcare provider of the patient’s choice. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto”.

23-99-203. Definitions.

(a)(1) “Copayment” means a type of cost sharing whereby insured or covered persons pay a specified predetermined amount per unit of service or percentage of healthcare costs with their healthcare insurer paying the remainder of the charge.

(2) The copayment is incurred at the time the service is rendered.

(3) The copayment may be a fixed or variable amount.

(b) “Gatekeeper system” means a system of administration used by any health benefit plan in which a primary care provider furnishes basic patient care and coordinates diagnostic testing, indicated treatment, and specialty referral for persons covered by the health benefit plan.

(c) “Health benefit plan” means any entity or program that provides reimbursement, including capitation, for healthcare services, except and excluding any entity or program that provides reimbursement and benefits pursuant to Arkansas Constitution, Amendment 26, Acts 1993, No. 796, or the Public Employee Workers’ Compensation Act, § 21-5-601 et seq., and rules and schedules adopted thereunder.

(d) “Healthcare provider” means those individuals or entities licensed by the State of Arkansas to provide healthcare services, limited to the following:

- (1) Advanced practice nurses;
- (2) Athletic trainers;
- (3) Audiologists;
- (4) Certified behavioral health providers;
- (5) Certified orthotists;
- (6) Chiropractors;
- (7) Community mental health centers or clinics;
- (8) Dentists;
- (9) Home health care;
- (10) Hospice care;
- (11) Hospital-based services;
- (12) Hospitals;
- (13) Licensed ambulatory surgery centers;
- (14) Licensed certified social workers;
- (15) Licensed dietitians;
- (16) Licensed intellectual and developmental disabilities service providers;
- (17) Licensed professional counselors;
- (18) Licensed psychological examiners;
- (19) Long-term care facilities;
- (20) Occupational therapists;
- (21) Optometrists;
- (22) Pharmacists;
- (23) Physical therapists;
- (24) Physicians and surgeons (M.D. and D.O.);
- (25) Podiatrists;
- (26) Prosthetists;
- (27) Psychologists;
- (28) Respiratory therapists;
- (29) Rural health clinics; and
- (30) Speech pathologists.

(e) "Healthcare services" means services and products provided by a healthcare provider within the scope of the healthcare provider's license.

(f) "Healthcare insurer" means any entity, including, but not limited to:

- (1) Insurance companies;
 - (2) Hospital and medical service corporations;
 - (3) Health maintenance organizations;
 - (4) Preferred provider organizations;
 - (5) Physician hospital organizations;
 - (6) Third-party administrators; and
 - (7) Prescription benefit management companies,
- authorized to administer, offer, or provide health benefit plans.

History. Acts 1995, No. 505, § 3; 1995, No. 1193, § 1; 2005, No. 2238, § 1; 2019, No. 315, § 2799; 2019, No. 316, § 1.

Amendments. The 2019 amendment by No. 315 deleted "regulations" following "rules" in (c).

The 2019 amendment by No. 316 inserted (d)(4) and (d)(16) and redesignated the remaining subdivisions accordingly.

23-99-204. Terms of health benefit plan.

(a) A healthcare insurer shall not, directly or indirectly:

(1)(A) Impose a monetary advantage or penalty under a health benefit plan that would affect a beneficiary's choice among those healthcare providers who participate in the health benefit plan according to the terms offered.

(B) "Monetary advantage or penalty" includes:

(i) A higher copayment;

(ii) A reduction in reimbursement for services; or

(iii) Promotion of one healthcare provider over another by these methods;

(2) Impose upon a beneficiary of healthcare services under a health benefit plan any copayment, fee, or condition that is not equally imposed upon all beneficiaries in the same benefit category, class, or copayment level under that health benefit plan when the beneficiary is receiving services from a participating healthcare provider pursuant to that health benefit plan; or

(3) Prohibit or limit a healthcare provider that is qualified under § 23-99-203(d) and is willing to accept the health benefit plan's operating terms and conditions, schedule of fees, covered expenses, and utilization rules and quality standards, from the opportunity to participate in that health benefit plan.

(b) Nothing in this subchapter shall prevent a health benefit plan from instituting measures designed to maintain quality and to control costs, including, but not limited to, the utilization of a gatekeeper system, as long as such measures are imposed equally on all providers in the same class.

(c)(1) A healthcare insurer may pay a claim for healthcare services by any lawful method, including the alternative payment method by gift card, credit card, or other type of electronic payment or virtual credit card as payment if the healthcare provider is given clear instructions about how to select the alternative payment method.

(2) However, a healthcare insurer is prohibited from requiring a healthcare provider to accept a gift card, credit card, or other type of electronic payment or virtual credit card as payment of a claim for healthcare services if the method of payment charges the healthcare provider a service fee to process.

History. Acts 1995, No. 505, § 4; 1995, No. 1193, § 2; 2019, No. 300, § 2; 2019, No. 315, § 2800.

Amendments. The 2019 amendment by No. 300 added (c).

The 2019 amendment by No. 315 substituted "rules" for "regulations" in (a)(3).

23-99-206. Violations.

It is a violation of this subchapter for any healthcare insurer or other person or entity to provide any health benefit plan providing for healthcare services to residents of this state that does not conform to this subchapter, but nothing in this subchapter shall constitute a violation on the basis of actions taken by the health benefit plan to maintain quality, enforce utilization rules, and to control costs.

History. Acts 1995, No. 505, § 8; 2019, No. 315, § 2801. substituted “rules” for “regulations” in the text.

Amendments. The 2019 amendment

23-99-207. Civil penalties.

RESEARCH REFERENCES

ALR. Construction and Application of Act, 28 U.S.C. § 2283. 73 ALR Fed. 2d Relitigation Exception to Anti-Injunction 405.

23-99-210. Healthcare provider — Adverse professional review action.

A healthcare insurer shall not exclude a physician as a participating healthcare provider in a health benefit plan based solely on an adverse professional review action, including those described in the Arkansas Peer Review Fairness Act, § 20-9-1301 et seq., unless a hospital’s physician peer review committee concludes that the conduct of the physician adversely affected or could have adversely affected a patient by violating the standard of care or posing a risk to the health or welfare of a patient.

History. Acts 2019, No. 996, § 1.

SUBCHAPTER 4 — ARKANSAS HEALTH CARE CONSUMER ACT

SECTION.
23-99-411. Processing applications of pro-
viders.
23-99-414. Rules.

SECTION.
23-99-420. [Repealed.]
23-99-421. Pediatric dental benefits —
Definitions.

23-99-411. Processing applications of providers.

- (a)(1)(A) Healthcare insurers shall establish mechanisms to ensure timely processing of requests for participation or renewal by providers and in making decisions that affect participation status.
- (B) These mechanisms shall include, at a minimum, provisions for the provider to receive a written statement of reasons for the healthcare insurer’s denial of a request for initial participation or renewal.
- (2)(A) Healthcare insurers shall make a decision within:

(i) Sixty (60) calendar days from the date of submission of a completed application as defined by rule of the Insurance Commissioner for participation or a request for renewal by a physician licensed under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.; and

(ii) One hundred eighty (180) calendar days from the date of submission of a completed application as defined by rule of the commissioner for participation or a request for renewal by any other provider.

(B) However, when a physician's credentials are verified through the Arkansas State Medical Board's Centralized Credentials Verification Service under § 17-95-107, the sixty (60) days specified under subdivision (a)(2)(A)(i) of this section is tolled from the date an order is received by the Centralized Credentials Verification Service from the healthcare insurer until the date the healthcare insurer receives notification by the Centralized Credentials Verification Service that the file is complete and available for retrieval.

(C)(i) A healthcare insurer shall provide written acknowledgement to a provider within ten (10) days of the insurer's receipt of an application.

(ii)(a) Upon receipt of an application, a healthcare insurer shall review the application to determine if the application is complete.

(b) If the application is incomplete, a healthcare insurer shall notify the applicant provider in writing within fifteen (15) calendar days that the application is incomplete.

(c) The notice shall include a list of the items required for the application to be complete.

(d) If the healthcare insurer does not send the notice within the required timeframe, the application shall be deemed complete.

(iii) If the information provided by a complete application, the healthcare insurer's investigation, or the Centralized Credentials Verification Service requires the healthcare insurer to collect more detailed information from the provider to fairly and responsibly process the application, the time specified under subdivision (a)(2)(A)(i) of this section is tolled, and the application is suspended from the date a written request for the information is sent to the provider until the request is fully and completely answered and sent to the healthcare insurer by the provider.

(iv) If application information specified under subdivision (a)(2)(C)(ii) of this section is missing and not received within ninety (90) days of notification by the healthcare insurer or if the request is not fully answered within ninety (90) days of the date it was sent, the healthcare insurer, in its discretion, may treat the application as abandoned and deny it.

(v) The request and response under this section shall be sent by regular mail or other means of delivery as may be allowed by rules adopted by the commissioner.

(3)(A) If a physician is already credentialed by the healthcare insurer but changes employment or location, joins a new group or clinic,

or opens an additional location, the healthcare insurer shall only require the submission of such additional information, if any, as is necessary to continue the physician's credentials based upon the changed employment, location, new group or clinic, or additional location.

(B) The healthcare insurer shall not require a new application or recredentialing application due solely to the changes listed in subdivision (a)(3)(A) of this section.

(C) Any change listed in subdivision (a)(3)(A) of this section shall be reflected within the healthcare insurer's system within thirty (30) calendar days of written notification by the physician of the change.

(4) Healthcare insurers shall promptly notify providers:

(A) Of any delay in processing applications; and

(B) Of the reasons for a delay in processing applications.

(5)(A) A healthcare insurer shall notify a physician in writing at least ninety (90) days before the deadline to submit a recredentialing application.

(B)(i) The healthcare insurer shall give the physician written notice at least forty-five (45) calendar days prior to terminating the physician for failure to submit a recredentialing application.

(ii) If the physician submits the recredentialing application during the forty-five-day period, the termination shall not take effect.

(C) During the forty-five-day period, the healthcare insurer shall not represent to the policyholder, plan members, or the general public that the physician has been or will be terminated from the network unless the termination is for some reason other than failure to obtain recredentialing.

(D) If a termination occurs for any reason, the healthcare insurer shall formally notify the physician in writing of the effective date of the termination and the basis for the termination.

(6) For payment purposes, a healthcare insurer shall treat an applicant physician as a participating physician from the date of submission of a completed application once an applicant physician has been approved through an insurer's credentialing process.

(7) Written notice under this section may be provided by electronic means for a provider who supplies an electronic mailing address to the healthcare insurer.

(8) The commissioner may adopt rules to ensure that covered healthcare claims submitted by patients or their providers are not negatively affected by delays in processing participation applications.

(9) In addition to any legal remedies or actions that may be brought against a healthcare insurer by the commissioner, a fine of one thousand dollars (\$1,000) per day shall be imposed for each day exceeding the sixty (60) days under subdivision (a)(2)(A)(i) of this section.

(10) The commissioner shall adopt rules to implement this subsection.

(b) This section does not prevent a provider or a healthcare insurer from terminating a participating provider contract in accordance with its terms.

History. Acts 1997, No. 1196, § 11; 2009, No. 350, § 1; 2015, No. 1232, § 1.

Amendments. The 2015 amendment substituted “Sixty (60) calendar days” for “Ninety (90) calendar days” in (a)(2)(A)(i); substituted “sixty (60) days” for “ninety (90) days” in (a)(2)(B); added (a)(2)(C)(i) and (ii), and redesignated the remaining subdivisions accordingly; in (a)(2)(C)(iii), substituted “a complete application” for “the initial application” near the beginning; added “If application information specified under subdivision (a)(2)(C)(ii) of

this section is missing and not received within ninety (90) days of notification by the healthcare insurer or” in (a)(2)(C)(iv); redesignated former (a)(3) as (a)(3)(A); in (a)(3)(A), inserted “a new group or clinic, or opens an additional location” and added “new group or clinic, or additional location”; added (a)(3)(B) and (C); inserted (a)(5) through (a)(7), and redesignated former (a)(5) as (a)(8); inserted (a)(9), and redesignated former (a)(6) as (a)(10); and substituted “This section does not” for “Nothing in this section shall” in (b).

23-99-414. Rules.

The Insurance Commissioner may promulgate necessary rules for carrying out this subchapter.

History. Acts 1997, No. 1196, § 14; 2019, No. 315, § 2802.

Amendments. The 2019 amendment

substituted “Rules” for “Regulations” in the section heading; and deleted “and regulations” following “rules” in the text.

23-99-420. [Repealed.]

A.C.R.C. Notes. This section was repealed in its entirety by Acts 2015, No. 1106, § 1. This section was also amended by Acts 2015, No. 992, §§ 1 and 2.

Publisher’s Notes. This section, con-

cerning prior authorization process by healthcare insurers, was repealed by Acts 2015, No. 1106, § 1. The section was derived from Acts 2011, No. 1155, § 1; 2013, No. 338, § 1; 2015, No. 992, §§ 1, 2.

23-99-421. Pediatric dental benefits — Definitions.

(a) As used in this section:

(1) “Exchange” means a health benefit exchange that offers health benefits under a health benefit plan offered by a healthcare insurer in this state through a state-based health insurance exchange or a health insurance exchange operated by the federal government under the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, and the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152;

(2) “Qualified dental plan” means a limited scope dental plan that has a certification that the qualified dental plan meets the criteria for certification under 42 U.S.C. § 18031(d)(2)(B)(ii), in effect on January 1, 2015; and

(3) “Qualified health plan” means a health benefit plan that provides healthcare coverage of essential health benefits under 42 U.S.C. § 18021(a), in effect on January 1, 2015.

(b) Beginning January 1, 2016, a qualified health plan offering healthcare coverage under the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, and the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, satisfies the minimum essential pediatric oral health benefits under the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, and the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, for health benefit plans offered through an exchange or outside an exchange that do not include the minimum essential pediatric oral health benefits if the healthcare insurer has reasonable assurance that the minimum essential pediatric oral health benefits are otherwise provided to the purchaser of the health benefit plan.

(c) The healthcare insurer shall be considered to have reasonable assurance that the minimum essential pediatric oral health benefits are otherwise provided to the purchaser of the health benefit plan if:

(1) At least one (1) qualified dental plan offers the minimum essential pediatric oral health benefits that are available to the purchaser of the health benefit plan; and

(2) A qualified health plan prominently discloses at the time of purchase on a form approved by the Insurance Commissioner that the qualified health plan does not provide the minimum essential pediatric oral health benefits.

History. Acts 2015, No. 1134, § 1.

SUBCHAPTER 5 — ARKANSAS MENTAL HEALTH PARITY ACT OF 2009

SECTION.

23-99-510. Rules.

23-99-510. Rules.

The Insurance Commissioner shall enforce this subchapter and shall promulgate necessary rules for carrying out this subchapter.

History. Acts 1997, No. 1020, § 10; deleted “and regulations” following “rules”
2019, No. 315, § 2803. in the section heading and in the text.

Amendments. The 2019 amendment

SUBCHAPTER 6 — DENTAL POINT OF SERVICE ACT

SECTION.

23-99-605. Rules.

23-99-605. Rules.

Within one hundred twenty (120) days of July 30, 1999, the Insurance Commissioner shall promulgate necessary rules for carrying out this subchapter, giving maximum possible effect to the General Assembly's intent to promote quality medical care through increased choice.

History. Acts 1999, No. 1232, § 5; deleted “and regulations” following “rules” 2019, No. 315, § 2804. in the section heading and in the text.

Amendments. The 2019 amendment

SUBCHAPTER 7 — GRIEVANCE SYSTEMS AND QUALITY ASSESSMENT AND IMPROVEMENT SYSTEMS

SECTION.
23-99-702. Definitions.
23-99-703. Grievance system.
23-99-704. Quality assessment and improvement systems.

SECTION.
23-99-705. Applicability and scope.
23-99-706. Enforcement and penalties.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

23-99-702. Definitions.

As used in this subchapter:

- (1) “Commissioner” means the Insurance Commissioner;
- (2) [Repealed.]
- (3) “Healthcare services” means any services included in the furnishing to any individual of medical or dental care, hospitalization, or services incident to the furnishing of care or hospitalization, as well as the furnishing to any person of any and all other services or goods for the purpose of preventing, alleviating, curing, or healing human illness or injury;
- (4) “Health carrier” means any person who undertakes to provide or arrange for one (1) or more managed care plans;
- (5) “Managed care plan” means any arrangement whereby a health carrier undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any healthcare services, and at least part of the arrangement consists of arranging for or the provision of healthcare services as distinguished from mere indemnifications against the cost of the healthcare services on a prepaid basis through insurance or otherwise; and
- (6) “Network” when used to describe a provider of health services, including, but not limited to, a hospital, physician, home health agency, pharmacy, etc., means that the provider has a participation agreement

in effect with a health carrier, directly or through another entity, to provide health services to covered persons.

History. Acts 1999, No. 1200, § 2; 2019, No. 910, § 5109. **Amendments.** The 2019 amendment repealed (2).

23-99-703. Grievance system.

(a) All health carriers and networks shall make arrangements for handling and resolving grievances.

(b) Each health carrier and network shall:

(1) Maintain records of grievances filed with the health carrier and network concerning the quality of healthcare services; and

(2) Submit in the form and manner prescribed by the Secretary of the Department of Health a periodic report which shall include:

(A) A written description of the processes and procedures for resolving grievances; and

(B) The total number of grievances handled through the grievance system, including a compilation of the dates of the grievances, the reason for the grievances, and resolutions of each grievance.

(c) In consultation with the Insurance Commissioner, the secretary may promulgate rules in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., to carry out the provisions of this subchapter to enable the state to be properly informed of quality issues within the state and to adequately respond to any quality concerns expressed through grievances.

History. Acts 1999, No. 1200, § 3; 2019, No. 315, § 2805; 2019, No. 910, §§ 5110, 5111. The 2019 amendment by No. 910 substituted “Secretary of the Department of Health” for “Director of the Department of Health” in the introductory language of

Amendments. The 2019 amendment by No. 315 deleted “and regulations” following “rules” in (c). (b)(2); and substituted “secretary” for “director” in (c).

23-99-704. Quality assessment and improvement systems.

(a) Each health carrier and network shall:

(1) Make arrangements for measuring and improving the quality of healthcare services;

(2) Maintain quality assessment and improvement programs and records measuring the outcomes of healthcare services; and

(3) Submit to the Secretary of the Department of Health in the time, manner, and form prescribed the following information:

(A) A written description of any quality assessment and quality improvement systems; and

(B) Findings of relevant quality data as determined by the secretary.

(b) In consultation with the Insurance Commissioner, the secretary may promulgate rules in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., to carry out the provisions of this subchapter to enable the state to be properly informed of quality issues

within the state and to adequately respond to any quality concerns found through the outcome data.

(c) The provisions of § 16-46-105 and § 20-9-501 et seq. shall apply to all records maintained pursuant to this subchapter.

History. Acts 1999, No. 1200, § 4; 2019, No. 315, § 2806; 2019, No. 910, §§ 5112, 5113.
Amendments. The 2019 amendment by No. 315 deleted “and regulations” following “rules” in (b).

The 2019 amendment by No. 910 substituted “Secretary of the Department of Health” for “Director of the Department of Health” in the introductory language of (a)(3); and substituted “secretary” for “director” in (a)(3)(B) and (b).

23-99-705. Applicability and scope.

(a) This subchapter shall not apply to disability income, specified disease, Medicare supplement, hospital indemnity, accident-only policies, long-term care, short-term limited duration insurance, and all other supplemental insurance products issued by health carriers.

(b) In terms of the Secretary of the Department of Health’s regulatory authority pursuant to §§ 23-99-703 and 23-99-704, such authority shall apply to the quality of care provided by health carriers and networks operating in this state and shall not apply to the benefits offered by any health carrier and network or to the administration of such benefits.

History. Acts 1999, No. 1200, § 5; 2019, No. 910, § 5114.
Amendments. The 2019 amendment

substituted “Secretary of the Department of Health’s” for “Director of the Department of Health’s” in (b).

23-99-706. Enforcement and penalties.

The Secretary of the Department of Health shall have the power to implement and enforce this subchapter.

History. Acts 1999, No. 1200, § 6; 2019, No. 910, § 5115.
Amendments. The 2019 amendment

substituted “Secretary of the Department of Health” for “Director of the Department of Health”.

SUBCHAPTER 8 — ENFORCEMENT OF ANY WILLING PROVIDER LAWS

SECTION.
23-99-802. Definitions.
23-99-804. Health insurer — Healthcare provider contracts.

Effective Dates. Acts 2019, No. 589, § 2: Mar. 29, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that healthcare providers in Arkansas, often practicing in rural areas where there is limited access to healthcare pro-

viders, are not being approved by health-care insurers, even if the healthcare provider is licensed and has been approved by Medicare and Medicaid; that this act is needed to allow an individual who has insurance coverage to use a healthcare provider of his or her choice in communi-

ties that are often underserved; and that this act is immediately necessary because failure by health insurers to recognize some healthcare providers creates a burden on individuals with insurance coverage and limits the healthcare providers available to an individual who has coverage. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the pub-

lic peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto".

23-99-802. Definitions.

As used in this subchapter:

(1) "Any willing provider law" means a law that prohibits discrimination against a provider willing to meet the terms and conditions for participation established by a health insurer or that otherwise precludes an insurer from prohibiting or limiting participation by a provider who is willing to accept a health insurer's terms and conditions for participation in the provision of services through a health benefit plan;

(2) "ERISA" means the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq.;

(3) "Health benefit plan" means any health insurance policy or certificate, health maintenance organization contract, hospital and medical service corporation contract or certificate, a self-insured plan or a plan provided by a multiple employer welfare arrangement, to the extent permitted by ERISA, the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq., or any health benefit plan that affects the rights of an Arkansas insured and bears a reasonable relation to Arkansas, whether delivered or issued for delivery in Arkansas;

(4) "Healthcare provider" or "provider" means those individuals or entities licensed by the State of Arkansas to provide healthcare services, limited to the following:

- (A) Advanced practice nurses;
- (B) Athletic trainers;
- (C) Audiologists;
- (D) Certified behavioral health providers;
- (E) Certified orthotists;
- (F) Chiropractors;
- (G) Community mental health centers or clinics;
- (H) Dentists;
- (I) Home health care;
- (J) Hospice care;
- (K) Hospital-based services;
- (L) Hospitals;
- (M) Licensed ambulatory surgery centers;
- (N) Licensed certified social workers;

- (O) Licensed dieticians;
- (P) Licensed durable medical equipment providers;
- (Q) Licensed intellectual and developmental disabilities service providers;
- (R) Licensed professional counselors;
- (S) Licensed psychological examiners;
- (T) Long-term care facilities;
- (U) Occupational therapists;
- (V) Optometrists;
- (W) Pharmacists;
- (X) Physical therapists;
- (Y) Physicians and surgeons (M.D. and D.O.);
- (Z) Podiatrists;
- (AA) Prosthetists;
- (BB) Psychologists;
- (CC) Respiratory therapists;
- (DD) Rural health clinics;
- (EE) Speech pathologists; and
- (FF) Other healthcare practitioners as determined by the State Insurance Department in rules promulgated under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.;

(5) “Health insurer” or “healthcare insurer” means any entity that is authorized by the State of Arkansas to offer or provide health benefit plans, policies, subscriber contracts, or any other contracts of a similar nature which indemnify or compensate healthcare providers for the provision of healthcare services;

(6) “Noninsurer” means an entity that is not required to obtain authorization from the department to do business as a health insurer but that does have a provider network; and

(7) “Self-insured” includes self-funded and vice versa.

History. Acts 2005, No. 491, § 5; 2005, No. 2238, § 3; 2019, No. 315, § 2807; 2019, No. 316, § 2.

Amendments. The 2019 amendment by No. 315 substituted “rules” for “regulations” in former (4)(DD) [now (4)(F)(F)].

The 2019 amendment by No. 316 inserted (4)(D) and (4)(Q) and redesignated the remaining subdivisions accordingly, and, in (4)(FF), substituted “State Insurance Department” for “department” and “rules” for “regulations”.

23-99-804. Health insurer — Healthcare provider contracts.

(a) A healthcare provider, including without limitation a physician, nurse, pharmacist, dentist, physical therapist, physician assistant, or any other healthcare provider licensed and in good standing with the state licensing board responsible for the licensing of the healthcare provider, shall not be excluded from contracting with a health insurer, third-party administrator, pharmacy benefits manager, or other entity that is subject to § 23-99-802, if the healthcare provider is permitted to participate in Medicare, Medicaid, or any other federal health benefit plan.

(b) This section does not preempt § 23-99-204 regarding the requirement that a healthcare provider accept a health benefit plan’s operating terms and conditions, schedule of fees, covered expenses, and utilization regulations and quality standards to participate in that health benefit plan.

History. Acts 2019, No. 589, § 1.

SUBCHAPTER 9 — LIMITATION ON FINANCIAL PENALTIES IN ALTERNATIVE PAYMENT SYSTEMS

SECTION.

- 23-99-901. Legislative findings.
- 23-99-902. Definitions.
- 23-99-903. Physician penalties — Limitation.

SECTION.

- 23-99-904. Waiver prohibited.
- 23-99-905. Enforcement.

23-99-901. Legislative findings.

The General Assembly finds that:

- (1) Under an alternative payment system, a healthcare payor, when determining a healthcare provider’s patient care costs, may use factors that are not under the control of the healthcare provider;
- (2) A healthcare provider may not receive an appropriate share of savings or reduction in recoupment under an alternative payment system if the healthcare provider’s patients have a higher cost of care; and
- (3) A healthcare provider should not be penalized for higher patient care costs if any of the costs, or other factors determining reimbursement, are not under the control of the healthcare provider.

History. Acts 2015, No. 902, § 1; 2019, No. 862, § 1. “physician” throughout the section; and inserted “or other factors determining reimbursement” in (3).
Amendments. The 2019 amendment substituted “healthcare provider” for

23-99-902. Definitions.

As used in this subchapter:

- (1) “Alternative payment system” means a payment methodology used by a healthcare payor that includes a risk-sharing or gain-sharing component for a healthcare provider that participates in a plan, program, or network offered by the healthcare payor;
- (2) “Gain-sharing payment” means an increase in a payment or additional payments made by a healthcare payor to a healthcare provider as a result of the achievement of identified benchmarks, including without limitation that patient care costs fall below cost thresholds of any form;
- (3)(A) “Healthcare payor” means an entity that reimburses a physician for the delivery of healthcare services that are covered by a plan administered, issued, or delivered by the entity.

(B) “Healthcare payor” does not include a provider-based network or system that utilizes risk-sharing including an accountable care organization or a clinically integrated network;

(4) “Healthcare provider” means any type of provider that renders healthcare services to patients for compensation, including:

(A) A doctor of medicine, a doctor of osteopathy, or another licensed healthcare professional acting within the professional’s licensed scope of practice; or

(B) A healthcare facility, including a hospital, ambulatory surgery center, or other type of facility licensed in this state to provide healthcare services; and

(5)(A) “Risk-sharing payment” means a reduction in a payment to or refund of a payment already made to a healthcare provider as a result of failure to achieve identified benchmarks, including without limitation that patient care costs exceed cost thresholds of any form.

(B) “Risk-sharing payment” includes the alternative payment method by gift card, credit card, or other type of electronic payment or virtual credit card as payment if the healthcare provider is given clear instructions about how to select an alternative payment method that does not result in the healthcare provider’s being charged a service fee to process.

History. Acts 2015, No. 902, § 1; 2017, No. 724, § 1; 2019, No. 300, § 3; 2019, No. 862, § 1.

Publisher’s Notes. Acts 2019, No. 862, § 1 specifically amended this section as amended by Acts 2019, No. 300.

Amendments. The 2017 amendment substituted “a plan administered, issued, or delivered by the entity” for “the healthcare payor” in (3)(A).

The 2019 amendment by No. 300 added (4)(B) and redesignated former (4) as (4)(A).

The 2019 amendment by No. 862 substituted “healthcare provider” for “physician” throughout the section; inserted “the achievement of identified benchmarks, including without limitation that” in (2); inserted (4); redesignated former (4) as (5); and inserted “failure to achieve identified benchmarks, including without limitation that” in (5)(A).

23-99-903. Physician penalties — Limitation.

(a) A healthcare payor doing business in this state, when determining any gain-sharing or risk-sharing for a healthcare provider, shall not attribute to a healthcare provider any costs that are a result of variations in the healthcare payor’s freely negotiated contract pricing with other persons or entities outside the healthcare provider’s practice if including the costs reduces a healthcare provider’s gain-sharing amount or increases a healthcare provider’s risk-sharing amount.

(b)(1) When determining any gain-sharing or risk-sharing for a healthcare provider based on the achievement of or failure to attain certain benchmarks, a healthcare payor doing business in this state shall use clearly expressed and identifiable benchmarks.

(2) At least ninety (90) days in advance of implementation, the healthcare payor shall explain to the healthcare provider the applicability of the identifiable benchmarks.

(3) Any identifiable benchmarks shall be within the control of the healthcare provider to achieve or fail to attain.

History. Acts 2015, No. 902, § 1; 2019, No. 862, § 1. and substituted “healthcare provider” for “physician” and made similar changes throughout (a); and added (b).

Amendments. The 2019 amendment designated the former provisions as (a),

23-99-904. Waiver prohibited.

- (a) The provisions of this subchapter shall not be waived by contract.
- (b) Contractual arrangements or actions taken in conflict with this subchapter or that purport to waive any requirements of this subchapter are void.

History. Acts 2017, No. 724, § 2; 2019, No. 862, § 1. **Amendments.** The 2019 amendment made no changes to this section.

23-99-905. Enforcement.

- (a) The State Insurance Department shall develop and promulgate rules for the implementation and enforcement of this subchapter.
- (b) In addition to or as an alternative to any enforcement action by the department, a healthcare provider or an organization that represents healthcare providers may enforce this subchapter by filing suit against a healthcare payor in:
 - (1) Pulaski County Circuit Court; or
 - (2) The circuit court of a county in Arkansas in which one (1) of the healthcare provider claimants resides or does business.

History. Acts 2017, No. 724, § 2; 2019, No. 862, § 1. clinic” in the introductory language; and substituted “health care providers” for “physicians” and made similar changes in the introductory language of (b) and in (b)(2).

Amendments. The 2019 amendment, in (b), substituted “healthcare provider” for “physician, a physician practice or

SUBCHAPTER 10 — VISION CARE PLAN ACT OF 2015

SECTION.	SECTION.
23-99-1001. Title.	23-99-1004. Private civil action.
23-99-1002. Definitions.	23-99-1005. Rules — Enforcement — Effective date.
23-99-1003. Prohibited practices — Agreements.	

23-99-1001. Title.

This subchapter shall be known and may be cited as the “Vision Care Plan Act of 2015”.

History. Acts 2015, No. 959, § 1.

23-99-1002. Definitions.

As used in this subchapter:

(1) "Covered materials" means materials for which reimbursement from the insurer, vision care plan, or vision care discount plan is provided to a vision care provider by an individual's vision benefit plan or contract and that are reimbursable subject to a deductible, copayment, coinsurance, or other contractual limitations;

(2) "Covered services" means services for which reimbursement from the insurer, vision care plan, or vision care discount plan is provided to a vision care provider by an individual's vision benefit plan or contract and that are reimbursable subject to a deductible, copayment, coinsurance, or other contractual limitations;

(3) "Insurer" means an insurance company, a health maintenance organization, a hospital and medical service corporation, or a self-insured health plan for employees of a governmental entity;

(4) "Materials" means ophthalmic devices, including without limitation:

(A) Lenses;

(B) Devices containing lenses;

(C) Artificial intraocular lenses;

(D) Ophthalmic frames;

(E) Lens-mounting apparatus;

(F) Prisms;

(G) Spectacle or contact lens treatments and coatings; and

(H) Prosthetic devices to correct, relieve, or treat defects or abnormal conditions of the human eye or its adnexa;

(5) "Noncovered materials" means materials that are not covered by an insurer, a vision care plan, or a vision care discount plan;

(6) "Noncovered services" means services that are not covered by an insurer, a vision care plan, or a vision care discount plan;

(7) "Participating provider agreement" means an agreement between a vision care provider and an insurer that obligates a vision care provider to provide for compensation services and materials to an individual who is insured by the insurer;

(8) "Services" means benefits or services provided by a vision care provider;

(9) "Vision benefit plan or contract" means a plan, contract, or policy of insurance issued by an insurer that provides for vision care benefits or services;

(10) "Vision care discount plan" means a separate plan to provide benefits or services under a rider to a health benefit plan or as a stand-alone agreement that is authorized by a vision care provider to provide discounts to individuals under the Primary Eye Care Provider Act, § 23-99-301 et seq.;

(11) "Vision care plan" means an entity that provides health benefits and that creates, promotes, sells, provides, advertises, or administers an integrated or stand-alone vision benefit plan or contract; and

(12) “Vision care provider” means an individual licensed as an optometrist under § 17-90-301 et seq., or a licensed osteopathic or medical physician licensed under § 17-91-101 et seq. or § 17-95-401 et seq., if the physician has also completed a residency in ophthalmology.

History. Acts 2015, No. 959, § 1.

23-99-1003. Prohibited practices — Agreements.

(a) A participating provider agreement between an insurer, vision care plan, or vision care discount plan and a vision care provider shall not establish a fee that a vision care provider shall charge for services or materials that are not covered by a vision benefit plan or contract.

(b) A vision care provider shall not charge a fee for services or materials that is more than the vision care provider’s normal rate for the services or materials if the services or materials are noncovered services or noncovered materials.

(c)(1) An insurer, vision care plan, or vision care discount plan shall not require a vision care provider to apply a discount to an individual who is insured by the insurer with a participating vision care provider for noncovered services or noncovered materials.

(2) An insurer, vision care plan, or vision care discount plan shall not avoid the restriction under subdivision (c)(1) of this section by providing minimal reimbursement for a service or materials to apply a discount.

(d) A participating provider agreement between an insurer, vision care plan, or vision care discount plan and a vision care provider shall not require that a vision care provider participate with or be credentialed by any specific vision care plan or vision care discount plan as a condition to join an insurer’s provider panel.

(e) A participating provider agreement between an insurer, vision care plan, or vision care discount plan and a vision care provider shall not restrict or limit, directly or indirectly, the vision care provider’s choice of optical labs or choice of sources and suppliers of services or materials provided by the vision care provider to an individual who is insured by the insurer.

(f) The terms, discounts, and reimbursement rates in a participating contract between an insurer, vision care plan, or vision care discount plan with a vision care provider shall not be modified during the term of a participating contract absent written authorization from the vision care provider.

(g) An optician licensed under the Ophthalmic Dispensing Act, § 17-89-101 et seq., is subject to:

- (1) Subsections (c) and (e) of this section; and
- (2) Subsection (b) of this section in regard to materials.

History. Acts 2015, No. 959, § 1.

23-99-1004. Private civil action.

(a) A vision care provider adversely affected by any violation of this subchapter by an insurer, vision care plan, or a vision care discount plan may bring a civil action in a court of competent jurisdiction against the insurer, vision care plan, or a vision care discount plan for injunctive relief.

(b) If a person prevails in the civil action under subsection (a) of this section, the person shall recover:

- (1) Monetary damages not less than one thousand dollars (\$1,000);
- (2) Three (3) times the amount of actual damages, if any; and
- (3) Reasonable attorney's fees, costs, and any other proper relief.

History. Acts 2015, No. 959, § 1.

23-99-1005. Rules — Enforcement — Effective date.

(a) The State Insurance Department shall develop and promulgate rules for the implementation and administration of this subchapter.

(b) The Insurance Commissioner shall enforce this subchapter and may seek injunctive relief for violations of this subchapter.

(c) This subchapter is applicable to a vision benefit plan or contract issued, renewed, or recredentialed in this state on and after July 22, 2015.

History. Acts 2015, No. 959, § 1.

SUBCHAPTER 11 — PRIOR AUTHORIZATION TRANSPARENCY ACT

SECTION.

- 23-99-1101. Title.
- 23-99-1102. Legislative findings and intent.
- 23-99-1103. Definitions.
- 23-99-1104. Disclosure required.
- 23-99-1105. Prior authorization — Non-urgent healthcare service.
- 23-99-1106. Prior authorization — Urgent healthcare service.
- 23-99-1107. Prior authorization — Emergency healthcare service.
- 23-99-1108. Subscribers with terminal illness — Denial of prior authorization for covered prescription pain medication prohibited.
- 23-99-1109. Rescission of prior authorizations — Denial of payment for prior authorized services — Limitations.
- 23-99-1110. Waiver prohibited.
- 23-99-1111. Requests for prior authorization — Qualified persons

SECTION.

- authorized to review and approve — Adverse determinations to be made only by Arkansas-licensed physicians.
- 23-99-1112. Application of subchapter.
- 23-99-1113. Benefit inquiries authorized.
- 23-99-1114. Limitations on step therapy — Definition.
- 23-99-1115. Notice requirements — Process for appealing adverse determination and restriction or denial of healthcare service.
- 23-99-1116. Failure to comply with subchapter — Requested healthcare services deemed approved.
- 23-99-1117. Standardized form required for prescription drug benefits.
- 23-99-1118. Rules.
- 23-99-1119. Medication-assisted treatment for opioid addiction.

Effective Dates. Acts 2017, No. 815, § 13: Aug. 1, 2017. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that healthcare insurers and utilization review entities are denying medically necessary healthcare services; that by changing the prior authorization procedure to prevent the denial of medically necessary healthcare services by healthcare insurers and utilization review entities, Arkansas consumers will receive proper healthcare; and that unless this act becomes effective on August 1, 2017, utilization review entities and healthcare insurers will not know the specific effective date by which changes in computer systems must be made so that patients will not face the likelihood of going without potentially life-saving healthcare treatment or their providers will not be forced to provide treatment without compensation. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on August 1, 2017."

Acts 2019, No. 964, § 4: Apr. 12, 2019. Emergency clause provided: "It is found

and determined by the General Assembly of the State of Arkansas that medication-assisted treatment is effective at treating opioid addiction and results in substantial cost savings; that some healthcare insurers, including Medicaid, are placing numerous prior authorization requirements on healthcare providers and their patients who are in need of medication-assisted treatment; that these requirements are counterproductive; and that this act is immediately necessary because, as a result of these requirements, patients resort to continued illegal drug use to stop withdrawals and physicians may be deterred from treating patients due to the difficult prior authorization requirements. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto".

23-99-1101. Title.

This subchapter shall be known and may be cited as the "Prior Authorization Transparency Act".

History. Acts 2015, No. 1106, § 2.

23-99-1102. Legislative findings and intent.

(a) The General Assembly finds that:

(1) A physician-patient relationship is paramount and should not be subject to third-party intrusion; and

(2) Prior authorizations can place attempted cost savings ahead of optimal patient care.

(b) The General Assembly intends for this subchapter to:

(1) Ensure that prior authorizations do not hinder patient care or intrude on the practice of medicine; and

(2) Guarantee that prior authorizations include the use of written clinical criteria and reviews by appropriate physicians to secure a fair authorization review process for patients.

History. Acts 2015, No. 1106, § 2.

23-99-1103. Definitions.

As used in this subchapter:

(1)(A) "Adverse determination" means a decision by a utilization review entity to deny, reduce, or terminate coverage for a healthcare service furnished or proposed to be furnished to a subscriber on the basis that the healthcare service is not medically necessary or is experimental or investigational in nature.

(B) "Adverse determination" does not include a decision to deny, reduce, or terminate coverage for a healthcare service on any basis other than medical necessity or that the healthcare service is experimental or investigational in nature;

(2) "Authorization" means that a utilization review entity has:

(A) Reviewed the information provided concerning a healthcare service furnished or proposed to be furnished;

(B) Found that the requirements for medical necessity and appropriateness of care have been met; and

(C) Determined to pay for the healthcare service according to the provisions of the health benefit plan;

(3) "Clinical criteria" means any written policy, written screening procedures, drug formularies, lists of covered drugs, determination rules, determination abstracts, clinical protocols, practice guidelines, medical protocols, and other criteria or rationale used by the utilization review entity to determine the medical necessity of a healthcare service;

(4)(A) "Emergency healthcare service" means a healthcare service provided in a fixed facility in the first few hours after an injury or after the onset of an acute medical or obstetric condition that manifests itself by one (1) or more symptoms of such severity, including severe pain, that in the absence of immediate medical care, the injury or medical or obstetric condition would reasonably be expected to result in:

(i) Serious impairment of bodily function;

(ii) Serious dysfunction of or damage to any bodily organ or part; or

(iii) Death or threat of death.

(B) "Emergency healthcare service" includes the medically necessary surgical treatment of a condition discovered in the course of a surgical procedure originally intended for another purpose, so long as the subsequent surgical procedure is a covered benefit under the healthcare plan, and whether or not the originally intended surgical procedure or the subsequent surgical procedure for the condition discovered during surgery is subject to a prior authorization requirement;

(5) "Expedited prior authorization" means prior authorization and notice of that prior authorization for an urgent healthcare service to a subscriber or the subscriber's healthcare provider within one (1) business day after the utilization review entity receives all information needed to complete the review of the requested urgent healthcare service;

(6) “Fail first” means a protocol requiring that a healthcare service preferred by a utilization review entity shall fail to help a patient before the patient receives coverage for the healthcare service ordered by the patient’s healthcare provider;

(7)(A) “Health benefit plan” means any individual, blanket, or group plan, policy, or contract for healthcare services issued or delivered by a healthcare insurer in this state.

(B) “Health benefit plan” does not include a plan that includes only dental benefits or eye and vision care benefits;

(8)(A)(i) “Healthcare insurer” means an entity that is subject to state insurance regulation, including an insurance company, a health maintenance organization, a hospital and medical service corporation, a risk-based provider organization, and a sponsor of a nonfederal self-funded governmental plan.

(ii) “Healthcare insurer” includes Medicaid where specifically referenced in § 23-99-1119.

(B) “Healthcare insurer” does not include:

(i) A workers’ compensation plan;

(ii) Medicaid, except as provided under § 23-99-1119 or when Medicaid services are managed or reimbursed by a healthcare insurer; or

(iii) An entity that provides only dental benefits or eye and vision care benefits;

(9) “Healthcare provider” means:

(A) A doctor of medicine, a doctor of osteopathy, or another licensed healthcare professional acting within the professional’s licensed scope of practice; or

(B) A healthcare facility licensed in the state where the facility is located to provide healthcare services;

(10)(A) “Healthcare service” means a healthcare procedure, treatment, or service provided by a healthcare provider.

(B) “Healthcare service” includes the provision of pharmaceutical products or services or durable medical equipment;

(11) “Medicaid” means the state-federal medical assistance program established by Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq.;

(12)(A) “Medical necessity” or “medically necessary” means a healthcare service that a healthcare provider provides to a patient that is:

(i) In accordance with generally accepted standards of medical practice;

(ii) Clinically appropriate in terms of type, frequency, extent, site, and duration; and

(iii) Not primarily for the economic benefit of a health plan or purchaser or for the convenience of the patient, treating physician, or other healthcare provider.

(B) “Medical necessity” includes the terms “medical appropriateness”, “primary coverage criteria”, and any other terminology used by a utilization review entity that refers to a determination that is based in whole or in part on clinical justification for a healthcare service;

(13) "Prescription for medication-assisted treatment" means any prescription for medication used as treatment for opioid addiction approved by the United States Food and Drug Administration;

(14) "Prescription pain medication" means any medication prescribed as treatment for pain;

(15)(A) "Prior authorization" means the process by which a utilization review entity determines the medical necessity of an otherwise covered healthcare service before the healthcare service is rendered, including without limitation preadmission review, pretreatment review, utilization review, case management, fail first protocol, and step therapy.

(B) "Prior authorization" may include the requirement that a subscriber or healthcare provider notify the health insurer or utilization review entity of the subscriber's intent to receive a healthcare service before the healthcare service is provided;

(16) "Self-insured health plan for employees of governmental entities" means a trust established under § 14-54-101 et seq. or § 25-20-104 to provide benefits such as accident and health benefits, death benefits, disability benefits, and disability income benefits;

(17) "Step therapy" means a protocol requiring that a subscriber shall not be allowed coverage of a prescription drug ordered by the subscriber's healthcare provider until other less expensive drugs have been tried;

(18)(A) "Subscriber" means an individual eligible to receive coverage of healthcare services by a healthcare insurer under a health benefit plan.

(B) "Subscriber" includes a subscriber's legally authorized representative;

(19) "Terminal illness" means an illness, a progressive disease, or an advanced disease state from which:

(A) There is no expectation of recovery; and

(B) Death as a result of the illness or disease is reasonably expected within six (6) months;

(20) "Urgent healthcare service" means a healthcare service for a non-life-threatening condition that, in the opinion of a physician with knowledge of a subscriber's medical condition, requires prompt medical care in order to prevent:

(A) A serious threat to life, limb, or eyesight;

(B) Worsening impairment of a bodily function that threatens the body's ability to regain maximum function;

(C) Worsening dysfunction or damage of any bodily organ or part that threatens the body's ability to recover from the dysfunction or damage; or

(D) Severe pain that cannot be managed without prompt medical care; and

(21)(A) "Utilization review entity" means an individual or entity that performs prior authorization for at least one (1) of the following:

(i) A healthcare insurer;

(ii) A preferred provider organization or health maintenance organization; or

(iii) Any other individual or entity that provides, offers to provide, or administers hospital, outpatient, medical, or other health benefits to a person treated by a healthcare provider in this state under a policy, health benefit plan, or contract.

(B) A healthcare insurer is a utilization review entity if it performs prior authorization.

(C) "Utilization review entity" does not include an insurer of automobile, homeowner's, or casualty and commercial liability insurance or the insurer's employees, agents, or contractors.

History. Acts 2015, No. 1106, § 2; 2017, No. 815, § 2; 2019, No. 964, §§ 1, 2.

Amendments. The 2017 amendment inserted the definitions for "Prescription pain medication" and "Terminal illness"; deleted former (13) through (15) and redesignated the remaining subdivisions accordingly; substituted "medical necessity" for "necessity and appropriateness" in (3); redesignated former (4) and (4)(A) through (C) as (4)(A) and (4)(A)(i) through (iii); inserted "the injury or medical or obstetric condition" in the introductory language of (4)(A); added (4)(B); in (6), deleted "by a healthcare insurer" following "a protocol" and substituted "utilization review entity" for "healthcare insurer"; redesignated former (7) as (7)(A); added (7)(B); inserted "self-insured health plan for employees of a governmental entity" in (8)(A); added (8)(C); redesignated former (9) as (9) and (9)(A); added (9)(B); rewrote (10)(A); redesignated former (12) and (12)(A) through (C) as (12)(A) and

(12)(A)(i) through (iii); in the introductory language of (12)(A), substituted "Medical necessity" or "medically necessary" for "Medically necessary healthcare service" and deleted "in a manner" following "patient"; substituted "a health plan or purchaser" for "the health plans and purchasers" in (12)(A)(iii); added (12)(B); in (14)(A), deleted "and medical appropriateness" following "necessity" and substituted "case management, fail first protocol, and step therapy" for "and case management"; deleted "by a health insurer or a utilization review entity" following "requirement" in (14)(B); substituted "requiring that a subscriber shall not be" for "by a healthcare insurer requiring that a subscriber not be" in (16); rewrote (20)(A); substituted "healthcare" for "health" in (20)(B); and made stylistic changes.

The 2019 amendment rewrote (8); and added the definition for "Prescription for medication-assisted treatment".

23-99-1104. Disclosure required.

(a)(1) A utilization review entity shall disclose all of its prior authorization requirements and restrictions, including any written clinical criteria, in a publicly accessible manner on its website.

(2) The information described in subdivision (a)(1) of this section shall be explained in detail and in clear and ordinary terms.

(3)(A) Utilization review entities that have agreed, by contract with vendors or third-party administrators, to use licensed, proprietary, or copyrighted protected clinical criteria from the vendors or administrators may satisfy the disclosure requirement under subdivision (a)(1) of this section by making all relevant proprietary clinical criteria available to a healthcare provider that submits a prior authorization request to the utilization review entity through a secured link on the utilization review entity's website that is accessible to the healthcare provider from the public part of its website as

long as any link or access restrictions to the information do not cause any delay to the healthcare provider.

(B) For out-of-network providers, a utilization review entity may meet the requirements of this subdivision (a)(3) by:

(i) Providing the healthcare provider with temporary electronic access in a timely manner to a secure site to review copyright-protected clinical criteria; or

(ii) Disclosing copyright-protected clinical criteria in a timely manner to a healthcare provider through other electronic or telephonic means.

(b) Before a utilization review entity implements a new or amended prior authorization requirement or restriction as described in subdivision (a)(1) of this section, the utilization review entity shall update its website to reflect the new or amended requirement or restriction.

(c) Before implementing a new or amended prior authorization requirement or restriction, a utilization review entity shall provide contracted healthcare providers written notice of the new or amended requirement or restriction at least sixty (60) days before implementation of the new or amended requirement or restriction.

(d)(1) A utilization review entity shall make statistics available regarding prior authorization approvals and denials on its website in a readily accessible format.

(2) The statistics made available by a utilization review entity under this subsection shall categorize approvals and denials by:

(A) Physician specialty;

(B) Medication or diagnostic test or procedure;

(C) Medical indication offered as justification for the prior authorization request; and

(D) Reason for denial.

History. Acts 2015, No. 1106, § 2; 2017, No. 815, § 3.

Amendments. The 2017 amendment, in (a)(1), substituted “disclose” for “post”, deleted “and nonmedical review” following “authorization”, and substituted “in a publicly accessible manner on” for “on the public part of”; added (a)(3); deleted “or nonmedical review” following “authorization” in (b) and (c); deleted “and nonmedi-

cal approvals and denials” preceding “on its website” in (d)(1); in the introductory language of (d)(2), inserted “statistics made available by a” and “under this subsection” and substituted “categorize approvals and denials by” for “include categories for”; and, in (d)(2)(C), substituted “Medical indication” for “Indication” and inserted “as justification for the prior authorization request”.

23-99-1105. Prior authorization — Nonurgent healthcare service.

(a) If a utilization review entity requires prior authorization of a nonurgent healthcare service, the utilization review entity shall make an authorization or adverse determination and notify the subscriber and the subscriber’s nonurgent healthcare provider of the decision within two (2) business days of obtaining all necessary information to make the authorization or adverse determination.

(b) For purposes of this section, “necessary information” includes the results of any face-to-face clinical evaluation or second opinion that may be required.

History. Acts 2015, No. 1106, § 2.

23-99-1106. Prior authorization — Urgent healthcare service.

A utilization review entity shall render an expedited authorization or adverse determination concerning an urgent healthcare service and notify the subscriber and the subscriber’s healthcare provider of that expedited prior authorization or adverse determination no later than one (1) business day after receiving all information needed to complete the review of the requested urgent healthcare service.

History. Acts 2015, No. 1106, § 2.

23-99-1107. Prior authorization — Emergency healthcare service.

(a) A utilization review entity shall not require prior authorization for prehospital transportation or for provision of an emergency healthcare service.

(b)(1) A utilization review entity shall allow a subscriber and the subscriber’s healthcare provider a minimum of twenty-four (24) hours following an emergency admission or provision of an emergency healthcare service for the subscriber or healthcare provider to notify the utilization review entity of the admission or provision of an emergency healthcare service.

(2) If the admission or emergency healthcare service occurs on a holiday or weekend, a utilization review entity shall not require notification until the next business day after the admission or provision of the emergency healthcare service.

(c)(1) A utilization review entity shall cover emergency healthcare services necessary to evaluate and assess the health condition of a subscriber or to stabilize a subscriber.

(2) If a healthcare provider certifies in writing to a utilization review entity within seventy-two (72) hours of a subscriber’s admission that the subscriber’s condition required an emergency healthcare service, that certification will create a presumption that the emergency healthcare service was medically necessary, and such presumption may be rebutted only if the utilization review entity can establish, with clear and convincing evidence, that the emergency healthcare service was not medically necessary.

(d)(1) The determination by a utilization review entity of medical necessity of an emergency healthcare service shall not be based on whether the emergency healthcare service was provided by a healthcare provider that is a member of the health benefit plan’s provider network.

(2) Restrictions on coverage for an emergency healthcare service provided by a healthcare provider that is not a member of the health benefit plan's provider network shall not be greater than restrictions on coverage for an emergency healthcare service provided by a healthcare provider that is a member of the health benefit plan's provider network.

(e)(1) If a subscriber receives an emergency healthcare service that requires an immediate post-evaluation or post-stabilization healthcare service, a utilization review entity shall make an authorization within sixty (60) minutes of receiving a request.

(2) If the authorization is not made within sixty (60) minutes, the emergency healthcare service shall be approved.

History. Acts 2015, No. 1106, § 2; deleted "or medical appropriateness" following 2017, No. 815, § 4. deleted "necessity" in (d)(1).

Amendments. The 2017 amendment

23-99-1108. Subscribers with terminal illness — Denial of prior authorization for covered prescription pain medication prohibited.

If a subscriber's covered prescription pain medication requires a prior authorization, then the prior authorization shall not be denied if the subscriber has a terminal illness.

History. Acts 2015, No. 1106, § 2; 2017, No. 815, § 5. **Amendments.** The 2017 amendment rewrote the section.

23-99-1109. Rescission of prior authorizations — Denial of payment for prior authorized services — Limitations.

(a) A decision on a request for prior authorization by a utilization review entity shall include a determination as to whether or not the individual is covered by a health benefit plan and eligible to receive the requested service under the health benefit plan.

(b)(1) A utilization review entity shall not rescind, limit, condition, or restrict an authorization based upon medical necessity unless the utilization review entity notifies the healthcare provider at least three (3) business days before the scheduled date of the admission, service, procedure, or extension of stay.

(2) Notwithstanding subdivision (b)(1) of this section, a utilization review entity may rescind, limit, condition, or restrict an authorization if:

(A) The subscriber was not covered by the health benefit plan and was not eligible to receive the requested service under the health benefit plan on the date of the admission, service, procedure, or extension of stay; and

(B) The utilization review entity has provided to the healthcare provider a means to confirm whether or not the subscriber is covered by the health benefit plan and eligible to receive the requested service up to the date of admission, service, procedure, or extension of stay.

(c) A healthcare insurer shall pay a claim for a healthcare service for which prior authorization was received regardless of the terminology used by the utilization review entity or health benefit plan when reviewing the claim, unless:

- (1) The authorized healthcare service was never performed;
- (2) The submission of the claim for the healthcare service with respect to the subscriber was not timely under the terms of the applicable provider contract or policy;
- (3) The subscriber had not exhausted contract or policy benefit limitations based on information available to the utilization review entity or healthcare insurer at the time of the authorization but subsequently exhausted contract or policy benefit limitations after the authorization was issued, in which case the utilization review entity or healthcare insurer shall include language in the notice of authorization to the subscriber and healthcare provider that the visits or services authorized might exceed the limits of the contract or policy and would accordingly not be covered under the contract or policy;
- (4) There is specific information available for review by the appropriate state or federal agency that the subscriber or healthcare provider has engaged in material misrepresentation, fraud, or abuse regarding the claim for the authorized service; or

(5) The authorization was granted more than ninety (90) days before the authorized healthcare service is provided.

(d)(1)(A) A utilization review entity doing business in this state shall strive to implement no later than July 1, 2018, a mechanism by which healthcare providers may request prior authorizations through an automated electronic system as an alternative to telephone-based prior authorization systems.

(B) The State Insurance Department may promulgate a rule mandating the implementation of a mechanism described in this subsection and defining the services to which this subsection applies.

(2) A healthcare provider shall retain the ability to use either the automated electronic system or a telephone-based system.

(3) The automated electronic system shall be capable of handling benefit inquiries under § 23-99-1113.

(e) A service authorized and guaranteed for payment under this section for which the prior authorization is not rescinded or reversed under subsection (b) of this section is not subject to audit recoupment under § 23-63-1801 et seq., except as provided for in subsection (b) of this section.

History. Acts 2015, No. 1106, § 2; 2017, No. 815, § 6.

Amendments. The 2017 amendment rewrote the section.

Publisher's Notes. Former § 23-99-1109 is now codified as § 23-99-1110.

23-99-1110. Waiver prohibited.

(a) The provisions of this subchapter shall not be waived by contract.

(b) Any contractual arrangements or actions taken in conflict with this subchapter or that purport to waive any requirements of this subchapter are void.

History. Acts 2015, No. 1106, § 2; 2017, No. 815, § 7.

Amendments. The 2017 amendment rewrote the section.

Publisher's Notes. This section was formerly codified as § 23-99-1109.

23-99-1111. Requests for prior authorization — Qualified persons authorized to review and approve — Adverse determinations to be made only by Arkansas-licensed physicians.

(a) The initial review of information submitted in support of a request for prior authorization may be conducted by a qualified person employed or contracted by a utilization review entity.

(b) A request for prior authorization may be approved by a qualified person employed or contracted by a utilization review entity.

(c)(1) An adverse determination regarding a request for prior authorization shall be made by a physician who possesses a current and unrestricted license to practice medicine in the State of Arkansas issued by the Arkansas State Medical Board.

(2)(A) A utilization review entity shall provide a method by which a physician may request that a prior authorization request be reviewed by a physician in the same specialty as the physician making the request, by a physician in another appropriate specialty, or by a pharmacologist.

(B) If a request is made under subdivision (c)(2)(A) of this section, the reviewing physician or pharmacologist is not required to meet the requirements of subdivision (c)(1) of this section.

History. Acts 2015, No. 1106, § 2; 2017, No. 815, § 8.

Amendments. The 2017 amendment rewrote the section.

23-99-1112. Application of subchapter.

This subchapter applies to a healthcare insurer, whether or not the healthcare insurer is acting directly or indirectly through a private utilization review entity.

History. Acts 2015, No. 1106, § 2; 2017, No. 815, § 9.

merly codified at this section, see § 23-99-1115.

Publisher's Notes. For current provisions concerning the subject matter for-

Amendments. The 2017 amendment rewrote the section.

23-99-1113. Benefit inquiries authorized.

(a)(1) An in-network or out-of-network healthcare provider may submit a benefit inquiry to a healthcare insurer or utilization review entity for a healthcare service not yet provided to determine whether or not the healthcare service meets medical necessity and all other

requirements for payment under a health benefit plan if the healthcare service were to be provided to a specific subscriber.

(2)(A) The State Insurance Department shall issue a rule on or before January 1, 2018, that defines which benefits are subject to the requirements of this section.

(B) Until a rule is promulgated under subdivision (a)(2)(A) of this section, all benefit inquiries shall be processed according to this section.

(b) If a healthcare insurer or utilization review entity lacks sufficient information to respond to a benefit inquiry, the healthcare insurer or utilization review entity shall notify the healthcare provider within two (2) business days of the additional information that is required to respond to the benefit inquiry.

(c)(1) A healthcare insurer, either directly or through a utilization review entity, shall respond to a benefit inquiry authorized in subsection (a) of this section within ten (10) business days of receipt of information required to make a decision on the benefit inquiry.

(2) Responses to a benefit inquiry shall be provided in the same form and manner as responses to requests for prior authorization.

(d) Every healthcare insurer shall provide a convenient and accessible procedure for healthcare providers to submit benefit inquiries under this section.

(e) Sections 23-99-1109 — 23-99-1111 and 23-99-1114 — 23-99-1116 apply to the benefit inquiry process of any healthcare insurer or utilization review entity.

(f) A healthcare service approved under the benefit inquiry process authorized in this section is not subject to audit recoupment under § 23-63-1801 et seq., except as provided for in § 23-99-1109(b).

History. Acts 2015, No. 1106, § 2; 2017, No. 815, § 10. merly codified at this section, see § 23-99-1116.

Publisher's Notes. For current provisions concerning the subject matter for- **Amendments.** The 2017 amendment rewrote the section.

23-99-1114. Limitations on step therapy — Definition.

(a) If a utilization review entity has required a healthcare provider to utilize step therapy for a specific prescription drug for a subscriber, the utilization review entity shall not require the healthcare provider to utilize step therapy a second time for that same prescription drug, even though the utilization review entity or healthcare insurer may change its prescribed drug formulary or change to a new or different pharmacy benefits manager or utilization review entity.

(b) In order to ensure compliance with this section, if a healthcare insurer or utilization review entity changes its pharmacy benefits manager, the healthcare insurer or utilization review entity shall provide the new pharmacy benefits manager with adequate historical claims data to identify all subscribers who have been required to utilize step therapy and the results of that step therapy.

(c) Except as provided in subsection (d) of this section, notwithstanding subsection (a) of this section, a utilization review entity may require the utilization of step therapy if:

(1) A new drug has been introduced to treat the patient's condition or an existing therapy is considered clinically appropriate for treatment of the patient's condition; or

(2) The patient's medical or physical condition has changed substantially since the step therapy was required that makes the use of repeat step therapy appropriate.

(d)(1) An insurance policy that provides coverage for the treatment of metastatic cancer shall not limit or exclude coverage under the health benefit plan for a drug approved by the United States Food and Drug Administration that is on the prescription drug formulary of the insurance policy by mandating that a covered person with metastatic cancer undergo step therapy unless the preferred drug is consistent with best practices that:

(A) Are used for the treatment of metastatic cancer or associated conditions under:

(i) The United States Food and Drug Administration-approved indication; or

(ii) The National Comprehensive Cancer Network Drugs and Biologics Compendium indication; or

(B) Use evidence-based, peer-reviewed, recognized medical literature.

(2) As used in subdivision (d)(1) of this section, "metastatic cancer" means cancer that has spread from a primary or original site of the cancer to surrounding or nearby tissues, lymph nodes, or other parts of the body.

History. Acts 2015, No. 1106, § 2; 2017, No. 815, § 11; 2019, No. 699, §§ 4, 5.

Publisher's Notes. For current provisions concerning the subject matter formerly codified at this section, see § 23-99-1117.

Amendments. The 2017 amendment rewrote the section.

The 2019 amendment added "Except as provided in subsection (d) of this section" in the introductory language of (c); and added (d).

23-99-1115. Notice requirements — Process for appealing adverse determination and restriction or denial of healthcare service.

(a)(1) Notice of an adverse determination shall be provided to the healthcare provider that initiated the prior authorization.

(2) Notice may be made by electronic mail, fax, or hard copy letter sent by regular mail, or verbally, as requested by the subscriber's healthcare provider.

(b) The written or verbal notice required under this section shall include:

(1) The following information:

(A) The name, title, and telephone number of the physician responsible for making the adverse determination and, in the event that the physician responsible for making the adverse determination is not available, a telephone number where a peer-to-peer contact with another physician regarding the adverse determination can be made;

(B) The reviewing physician's board certification status or board eligibility; and

(C) A list of states in which the reviewing physician is licensed and the license number issued to the reviewing physician by each state;

(2) The written clinical criteria, if any, and any internal rule, guideline, or protocol on which the utilization review entity relied when making the adverse determination and how those provisions apply to the subscriber's specific medical circumstance;

(3) Information for the subscriber and the subscriber's healthcare provider that describes the procedure through which the subscriber or healthcare provider may request a copy of any report developed by personnel performing the review that led to the adverse determination; and

(4)(A) Information that explains to the subscriber and the subscriber's healthcare provider the right to appeal the adverse determination.

(B) The information required under subdivision (b)(4)(A) of this section shall include:

(i) Instructions concerning how to perfect an appeal and how the subscriber and the subscriber's healthcare provider may ensure that written materials supporting the appeal will be considered in the appeal process; and

(ii)(a) Addresses and telephone numbers to be used by healthcare providers and subscribers to make complaints to the Arkansas State Medical Board, the State Board of Health, and the State Insurance Department.

(b) Subdivision (b)(4)(B)(ii)(a) of this section does not apply to self-insured plans for employees of governmental entities.

(c)(1) When a healthcare service for the treatment or diagnosis of any medical condition is restricted or denied in favor of step therapy or a fail first protocol preferred by the utilization review entity, the subscriber's healthcare provider shall have access to a clear and convenient process to expeditiously request an override of that restriction or denial from the utilization review entity or healthcare insurer.

(2) Upon request, the subscriber's healthcare provider shall be provided contact information, including a phone number, for a person to initiate the request for an expeditious override of the restriction or denial.

(d) The appeal process described in subdivision (b)(4) of this section shall not apply when a healthcare service is denied because the healthcare service is within a category of healthcare services not covered by the health benefit plan.

History. Acts 2017, No. 815, § 12; 2019, No. 391, § 14.

Publisher's Notes. The subject matter of this section was formerly codified in part at § 23-99-1112.

Amendments. The 2019 amendment substituted "determination" for "decision" in (b)(1)(A).

23-99-1116. Failure to comply with subchapter — Requested healthcare services deemed approved.

(a) If a healthcare insurer or utilization review entity fails to comply with this subchapter, the requested healthcare services shall be deemed authorized or approved.

(b) A healthcare service that is authorized or approved under this section is not subject to audit recoupment under § 23-63-1801 et seq.

History. Acts 2017, No. 815, § 12.

Publisher's Notes. The subject matter

of subsection (a) of this section was formerly codified at § 23-99-1113.

23-99-1117. Standardized form required for prescription drug benefits.

(a) On and after January 1, 2017, to establish uniformity in the submission of prior authorization forms for prescription drugs, a utilization review entity shall utilize only a single standardized prior authorization form for obtaining approval in written or electronic form for prescription drug benefits.

(b) A utilization review entity may make the form required under subsection (a) of this section accessible through multiple computer operating systems.

(c) The form required under subsection (a) of this section shall:

(1) Not exceed two (2) pages; and

(2) Be designed to be submitted electronically from a prescribing provider to a utilization review entity.

(d) This section does not prohibit prior authorization by verbal means without a form.

(e) If a utilization review entity fails to use or accept the form developed under this section or fails to respond as soon as reasonably possible, but no later than seventy-two (72) hours, after receipt of a completed prior authorization request using the form developed under this section, the prior authorization request is deemed authorized or approved.

(f)(1) On and after January 1, 2017, each utilization review entity shall submit its prior authorization form to the State Insurance Department to be kept on file.

(2) A copy of a subsequent replacement or modification of a utilization review entity's prior authorization form shall be filed with the department within fifteen (15) days before the form is used or before implementation of the replacement or modification.

History. Acts 2017, No. 815, § 12.

Publisher's Notes. The subject matter

of this section was formerly codified at § 23-99-1114.

23-99-1118. Rules.

The State Insurance Department may promulgate rules for the implementation of this subchapter.

History. Acts 2017, No. 815, § 12.

23-99-1119. Medication-assisted treatment for opioid addiction.

(a) Except in the case of injectables, a healthcare insurer, including Medicaid, shall not:

(1) Require prior authorization in order for a patient to obtain coverage of buprenorphine, naloxone, naltrexone, methadone, and their various formulations and combinations approved by the United States Food and Drug Administration for the treatment of opioid addiction; or

(2) Impose any other requirement other than a valid prescription and compliance with the medication-assisted treatment guidelines issued by the Substance Abuse and Mental Health Services Administration under the United States Department of Health and Human Services in order for a patient to obtain coverage for buprenorphine, naloxone, naltrexone, methadone, and their various formulations and combinations approved by the United States Food and Drug Administration for the treatment of opioid addiction.

(b) Subdivision (a)(1) of this section shall only apply to the Arkansas Medicaid Program as it pertains to prescription drugs for treatment of opioid addiction designated as preferred on the evidence-based preferred drug list, provided there is at least one (1) of each of the drugs listed in subdivision (a)(1) of this section with the preferred designation on the preferred drug list or available without prior authorization.

(c) If a new formulation or medication approved by the United States Food and Drug Administration for use as a prescription for medication-assisted treatment becomes available after April 12, 2019, and is either more expensive or has not been shown to be more effective than the formulations and medications in subsection (a) of this section, then the healthcare insurer may require prior authorization of the new formulation or medication.

(d) A healthcare insurer utilizing a tiered drug formulary shall place on the lowest-cost benefit tier at least one (1) product for each of the following medications that is approved by the United States Food and Drug Administration:

(1) Buprenorphine;

(2) Naloxone;

(3) Naltrexone;

(4) Methadone; and

(5) A product containing both buprenorphine and naloxone.

(e) For purposes of any limit a healthcare insurer imposes on the number of prescriptions for a patient, a prescription for medication-assisted treatment shall not be counted.

(f) This section does not affect the responsibility of a healthcare provider to comply with the standard of care for medication-assisted

treatment, including without limitation the use of therapy in combination with medication.

(g) The Arkansas Medicaid Program shall have until January 1, 2020, to comply with this section.

History. Acts 2019, No. 964, § 3.

SUBCHAPTER 12 — HEALTHCARE CONTRACTING SIMPLIFICATION ACT

SECTION.

- 23-99-1201. Title.
- 23-99-1202. Definitions.
- 23-99-1203. All-products clause — Prohibition.
- 23-99-1204. Prohibition — Most favored nation clause.

SECTION.

- 23-99-1205. Contracting process.
- 23-99-1206. Freedom of contract.
- 23-99-1207. Enforcement.
- 23-99-1208. Rules.
- 23-99-1209. Effective date.

23-99-1201. Title.

This subchapter shall be known and may be cited as the “Healthcare Contracting Simplification Act”.

History. Acts 2019, No. 734, § 1.

23-99-1202. Definitions.

As used in this subchapter:

(1) “All-products clause” means a provision in a healthcare contract that requires a healthcare provider, as a condition of participation or continuation in a provider network or a health benefit plan, to:

(A) Serve in another provider network utilized by the contracting entity or a healthcare insurer affiliated with the contracting entity; or

(B) Provide healthcare services under another health benefit plan or product offered by a contracting entity or a healthcare insurer affiliated with the contracting entity;

(2) “Contracting entity” means a healthcare insurer or a subcontractor, affiliate, or other entity that contracts directly or indirectly with a healthcare provider for the delivery of healthcare services to enrollees;

(3) “Enrollee” means an individual who is entitled to receive healthcare services under the terms of a health benefit plan;

(4)(A) “Health benefit plan” means a plan, policy, contract, certificate, agreement, or other evidence of coverage for healthcare services offered or issued by a healthcare insurer in this state.

(B) “Health benefit plan” includes nonfederal governmental plans as defined in 29 U.S.C. § 1002(32), as it existed on January 1, 2019.

(C) “Health benefit plan” does not include:

(i) A disability income plan;

(ii) A credit insurance plan;

(iii) Insurance coverage issued as a supplement to liability insurance;

(iv) A medical payment under automobile or homeowners insurance plans;

(v) A health benefit plan provided under Arkansas Constitution, Article 5, § 32, the Workers' Compensation Law, § 11-9-101 et seq., or the Public Employee Workers' Compensation Act, § 21-5-601 et seq.;

(vi) A plan that provides only indemnity for hospital confinement;

(vii) An accident-only plan;

(viii) A specified disease plan;

(ix) A long-term care only plan;

(x) A dental-only plan; or

(xi) A vision-only plan;

(5) "Healthcare contract" means a contract entered into, materially amended, or renewed between a contracting entity and a healthcare provider for the delivery of healthcare services to enrollees;

(6)(A) "Healthcare insurer" means an entity that is subject to state insurance regulation and provides health insurance in this state.

(B) "Healthcare insurer" includes:

(i) An insurance company;

(ii) A health maintenance organization;

(iii) A hospital and medical service corporation;

(iv) A risk-based provider organization; and

(v) A sponsor of a nonfederal self-funded governmental plan;

(7) "Healthcare provider" means a person or entity that is licensed, certified, or otherwise authorized by the laws of this state to provide healthcare services;

(8) "Healthcare services" means services or goods provided for the purpose of or incidental to the purpose of preventing, diagnosing, treating, alleviating, relieving, curing, or healing human illness, disease, condition, disability, or injury;

(9) "Material amendment" means a change in a healthcare contract that results in:

(A) A decrease in fees, payments, or reimbursement to a participating healthcare provider;

(B) A change in the payment methodology for determining fees, payments, or reimbursement to a participating healthcare provider;

(C) A new or revised coding guideline;

(D) A new or revised payment rule; or

(E) A change of procedures that may reasonably be expected to significantly increase a healthcare provider's administrative expenses;

(10) "Most favored nation clause" means a provision in a healthcare contract that:

(A) Prohibits or grants a contracting entity an option to prohibit a participating healthcare provider from contracting with another contracting entity to provide healthcare services at a lower price than the payment specified in the healthcare contract;

(B) Requires or grants a contracting entity an option to require a participating healthcare provider to accept a lower payment in the

event the participating healthcare provider agrees to provide healthcare services to another contracting entity at a lower price;

(C) Requires or grants a contracting entity an option to require termination or renegotiation of an existing healthcare contract if a participating healthcare provider agrees to provide healthcare services to another contracting entity at a lower price; or

(D) Requires a participating healthcare provider to disclose the participating healthcare provider's contractual reimbursement rates with other contracting entities;

(11) "Participating healthcare provider" means a healthcare provider that has a healthcare contract with a contracting entity to provide healthcare services to enrollees with the expectation of receiving payment from the contracting entity or a healthcare insurer affiliated with the contracting entity; and

(12) "Provider network" means a group of healthcare providers that are contracted to provide healthcare services to enrollees at contracted rates.

History. Acts 2019, No. 734, § 1.

23-99-1203. All-products clause — Prohibition.

(a) Except as provided in subsections (b) and (d) of this section, a contracting entity shall not:

(1) Offer to a healthcare provider a healthcare contract that includes an all-products clause;

(2) Enter into a healthcare contract with a healthcare provider that includes an all-products clause; or

(3) Amend or renew an existing healthcare contract previously entered into with a healthcare provider so that the healthcare contract as amended or renewed adds or continues to include an all-products clause.

(b)(1) This section does not prohibit a contracting entity from:

(A) Offering a healthcare provider a contract that covers multiple health benefit plans that have the same reimbursement rates and other financial terms for the healthcare provider;

(B) Adding a new health benefit plan to an existing healthcare contract with a healthcare provider under the same reimbursement rates and other financial terms applicable under the original healthcare contract; or

(C) Requiring a healthcare provider to accept multiple health benefit plans that do not differ in reimbursement rates or other financial terms for the healthcare provider.

(2) A healthcare contract may include health benefit plans or coverage options for enrollees within a health benefit plan with different cost-sharing structures, including different deductibles or copayments, as long as the reimbursement rates and other financial terms between the contracting entity and the healthcare provider remain the same for each plan or coverage option included in the healthcare contract.

(3) This section does not authorize a healthcare provider to:

(A) Opt out of providing services to an enrollee of a particular health benefit plan after the healthcare provider has entered into a valid contract under this section to provide the services; or

(B) Refuse to disclose the provider networks or health benefit plans in which the healthcare provider participates.

(c)(1) A violation of this section is:

(A) An unfair trade practice under § 23-66-206; and

(B) Subject to the Trade Practices Act, § 23-66-201 et seq.

(2) If a healthcare contract contains a provision that violates this section, the healthcare contract is void.

(d) A contracting entity may require a healthcare provider to participate in the State and Public School Life and Health Insurance Program as a condition of contracting or continuing to contract with the healthcare provider for healthcare services under another health benefit plan, if:

(1) The other health benefit plan is an individual health plan not sold on the health insurance marketplace, as defined in § 23-64-602; and

(2) The rates offered to the healthcare provider for healthcare services to program enrollees are no lower than the rates paid to the healthcare provider under the other health benefit plan.

History. Acts 2019, No. 734, § 1.

23-99-1204. Prohibition — Most favored nation clause.

(a) A contracting entity shall not:

(1) Offer to a healthcare provider a healthcare contract that includes a most favored nation clause;

(2) Enter into a healthcare contract with a healthcare provider that includes a most favored nation clause; or

(3) Amend or renew an existing healthcare contract previously entered into with a healthcare provider so that the contract as amended or renewed adds or continues to include a most favored nation clause.

(b)(1) A violation of this section is:

(A) An unfair trade practice under § 23-66-206; and

(B) Subject to the Trade Practices Act, § 23-66-201 et seq.

(2) If a healthcare contract contains a provision that violates this section, the healthcare contract is void.

History. Acts 2019, No. 734, § 1.

23-99-1205. Contracting process.

(a)(1) A material amendment to a healthcare contract is allowed if a contracting entity provides to a participating healthcare provider the material amendment at least ninety (90) days before the effective date of the material amendment and in writing.

(2) The notice required under subdivision (a)(1) of this section shall specify the precise healthcare contract or healthcare contracts to which

the material amendment applies and be conspicuously labeled as follows:

“Notice of Material Amendment to Healthcare Contract”.

(3) The notice shall contain sufficient information about the amendment to allow a healthcare provider to assess the financial impact, if any, of the amendment.

(b) A notice described under subdivision (a)(1) of this section is not required for a material amendment resulting solely from a change in a fee schedule or code set if:

(1) The fee schedule or code set is published by the United States Government or another third party; and

(2) The terms of the healthcare contract expressly state that the healthcare provider's compensation or claims submission is based on the fee schedule or code set.

(c)(1) Within ten (10) business days of a healthcare provider's request, a contracting entity shall provide to the healthcare provider a full and complete copy of each healthcare contract between the contracting entity and the healthcare provider.

(2) A full and complete copy of the healthcare contract shall include any amendments to the healthcare contract.

(d)(1)(A) A healthcare contract shall open for renegotiation and revision at least one (1) time every three (3) years.

(B) Under subdivision (d)(1)(A) of this section, a party to the healthcare contract is not required to terminate the healthcare contract in order to open the healthcare contract for renegotiation of the terms.

(2) This section does not prohibit a renegotiation of a healthcare contract at any time during the term of the healthcare contract.

(e)(1) A violation of this section is:

(A) An unfair trade practice under § 23-66-206; and

(B) Subject to the Trade Practices Act, § 23-66-201 et seq.

(2) If a healthcare contract contains a provision that violates this section, the healthcare contract is void.

History. Acts 2019, No. 734, § 1.

23-99-1206. Freedom of contract.

(a) A contracting entity shall not, directly or indirectly, offer or enter into a healthcare contract that:

(1) Prohibits a participating healthcare provider from entering into a healthcare contract with another contracting entity; or

(2) Prohibits a contracting entity from entering into a healthcare contract with another healthcare provider.

(b)(1) A violation of this section is:

(A) An unfair trade practice under § 23-66-206; and

(B) Subject to the Trade Practices Act, § 23-66-201 et seq.

(2) If a healthcare contract contains a provision that violates this section, the healthcare contract is void.

History. Acts 2019, No. 734, § 1.

23-99-1207. Enforcement.

(a) A contracting entity is subject to the Trade Practices Act, § 23-66-201 et seq.

(b) The State Insurance Department shall enforce this subchapter.

History. Acts 2019, No. 734, § 1.

23-99-1208. Rules.

(a) The Insurance Commissioner shall promulgate rules necessary to ensure compliance with this subchapter.

(b)(1) When adopting the initial rules to ensure compliance with this subchapter, the final rule shall be filed with the Secretary of State for adoption under § 25-15-204(f):

(A) On or before March 1, 2020; or

(B) If approval under § 10-3-309 has not occurred by March 1, 2020, as soon as practicable after approval under § 10-3-309.

(2) The commissioner shall file the proposed rule with the Legislative Council under § 10-3-309(c) sufficiently in advance of March 1, 2020, so that the Legislative Council may consider the rule for approval before March 1, 2020.

History. Acts 2019, No. 734, § 1.

23-99-1209. Effective date.

(a) This subchapter applies to the activities of risk-based provider organizations on and after January 1, 2021.

(b) Except as provided in subsection (a) of this section, this subchapter is effective on and after September 1, 2019.

History. Acts 2019, No. 734, § 1.

SUBCHAPTER 13 — ASSIGNMENT OF BENEFITS

SECTION.

23-99-1301. Definitions.

23-99-1302. Assignment of benefits.

23-99-1303. Waiver prohibited.

SECTION.

23-99-1304. Enforcement.

23-99-1305. Rules.

23-99-1301. Definitions.

As used in this subchapter:

(1) “Contracting entity” means a healthcare insurer or any subcontractor, affiliate, or other entity that contracts directly or indirectly with a healthcare provider for the delivery of healthcare services to enrollees;

(2) “Enrollee” means a person who is entitled to receive healthcare services under the terms of a health benefit plan;

(3)(A) “Health benefit plan” means a plan, policy, contract, certificate, agreement, or other evidence of coverage for healthcare services offered or issued by a healthcare insurer in this state.

(B) “Health benefit plan” does not include:

- (i) A disability income plan;
- (ii) A credit insurance plan;
- (iii) Insurance coverage issued as a supplement to liability insurance;
- (iv) Medical payments under an automobile or homeowners insurance plan;
- (v) A health benefit plan provided under Arkansas Constitution, Article 5, § 32, the Workers’ Compensation Law, § 11-9-101 et seq., or the Public Employee Workers’ Compensation Act, § 21-5-601 et seq.;
- (vi) A plan that provides only indemnity for hospital confinement;
- (vii) An accident-only plan;
- (viii) A specified disease plan;
- (ix) A long-term care insurance plan;
- (x) A dental-only plan; or
- (xi) A vision-only plan;

(4) “Healthcare contract” means a contract entered into, materially amended, or renewed between a contracting entity and a healthcare provider for the delivery of healthcare services to enrollees;

(5)(A) “Healthcare insurer” means an entity that is subject to state insurance regulation and provides health insurance in this state.

(B) “Healthcare insurer” includes:

- (i) An insurance company;
 - (ii) A health maintenance organization;
 - (iii) A hospital and medical service corporation;
 - (iv) A risk-based provider organization; and
 - (v) A sponsor of a nonfederal self-funded governmental plan;
- (6) “Healthcare provider” means a person or entity that is licensed, certified, or otherwise authorized by the laws of this state to provide healthcare services;

(7) “Healthcare services” means services or goods provided for the purpose of preventing, diagnosing, treating, alleviating, relieving, curing, or healing human illness, disease, condition, disability, or injury;

(8) “Out-of-network provider” means a healthcare provider that provides healthcare services to an enrollee but is not a participating provider;

(9) “Participating provider” means a healthcare provider that has a healthcare contract with a contracting entity to provide healthcare services to enrollees with the expectation of receiving payment either directly from the contracting entity or from a healthcare insurer affiliated with the contracting entity; and

(10) “Payor” means a contracting entity or healthcare insurer responsible for payment for healthcare services provided to an enrollee under the terms of a healthcare contract or a health benefit plan.

History. Acts 2019, No. 736, § 1.

23-99-1302. Assignment of benefits.

(a) An enrollee, through an assignment of benefits, may assign to a healthcare provider the enrollee's right to receive reimbursement for any healthcare service rendered by a healthcare provider regardless of whether the healthcare provider is a participating provider or an out-of-network provider.

(b)(1) A healthcare provider that is provided an assignment of benefits by an enrollee under this section shall provide notice to the payor of the assignment of benefits with a claim for payment for healthcare services provided to an enrollee.

(2) If the healthcare provider providing notice to the payor is an out-of-network provider, the notice shall be accompanied by a complete copy of the assignment of benefits bearing the enrollee's signature and the date the assignment was executed.

(c)(1) A payor, upon receipt of the claim and notice of the assignment of benefits submitted by the healthcare provider, shall promptly remit payment of the claim directly to the healthcare provider.

(2) When payment is made directly to the healthcare provider, the payor shall give written notice of the payment to an enrollee.

(3) A violation of this subsection is:

(A) An unfair trade practice under § 23-66-206; and

(B) Subject to the Trade Practices Act, § 23-66-201 et seq.

(d)(1)(A) If an enrollee executes an assignment of benefits and the healthcare provider submits notice of that assignment of benefits with the healthcare provider's claim for payment under this section, the claim is not paid if the payor remits payment of the claim to the enrollee rather than to the healthcare provider.

(B) Notwithstanding the incorrect payment of a claim to an enrollee, a payor shall remain liable for remitting payment of the claim to the healthcare provider under the assignment of benefits.

(2) If an assignment of benefits has been executed but the payor remits payment of the claim to the enrollee, then the payor shall remit payment of the claim to the healthcare provider under the assignment of benefits within ten (10) days of receiving notice of the incorrect payment from the healthcare provider.

History. Acts 2019, No. 736, § 1.

23-99-1303. Waiver prohibited.

(a) This subchapter shall not be waived by contract.

(b) A contractual arrangement or actions taken in conflict with this subchapter or that purport to waive any requirement of this subchapter are void.

History. Acts 2019, No. 736, § 1.

23-99-1304. Enforcement.

(a) A contracting entity is subject to the Trade Practices Act, § 23-66-201 et seq.

(b) The State Insurance Department shall enforce this subchapter.

History. Acts 2019, No. 736, § 1.

23-99-1305. Rules.

(a) The Insurance Commissioner shall promulgate rules necessary to ensure compliance with this subchapter.

(b)(1) When adopting the initial rules to ensure compliance with this subchapter, the final rule shall be filed with the Secretary of State for adoption under § 25-15-204(f):

(A) On or before March 1, 2020; or

(B) If approval under § 10-3-309 has not occurred by March 1, 2020, as soon as practicable after approval under § 10-3-309.

(2) The commissioner shall file the proposed rule with the Legislative Council under § 10-3-309(c) sufficiently in advance of March 1, 2020, so that the Legislative Council may consider the rule for approval before March 1, 2020.

History. Acts 2019, No. 736, § 1.

CHAPTER 100**STATE INSURANCE DEPARTMENT CRIMINAL
INVESTIGATION DIVISION TRUST FUND ACT****SECTION.**

23-100-104. Antifraud assessment.

23-100-106. Rules.

23-100-104. Antifraud assessment.

(a)(1)(A) Each licensed insurer shall pay into the State Insurance Department Criminal Investigation Division Trust Fund a nonrefundable antifraud assessment as directed by the Insurance Commissioner for the reasonable and necessary expenses and operation of the Criminal Investigation Division.

(B) As used in this section, “licensed insurer” includes a:

(i) Licensed stock and mutual insurance company;

(ii) Reinsurer;

(iii) Health maintenance organization;

(iv) Fraternal benefit society;

(v) Hospital and medical service corporation;

(vi) Stipulated premium insurer;

(vii) Farmers’ mutual aid association; and

(viii) Prepaid legal insurer.

(2) This section does not apply to an approved but nonadmitted surplus lines insurer or to a registered risk retention group.

(b)(1) The antifraud assessment required by this section shall be paid annually on or before June 1 at the time and in the manner that the commissioner prescribes or at times alternate from June 1 annually that the commissioner prescribes.

(2)(A) By rule, the commissioner may set the amount of the antifraud assessment.

(B) The antifraud assessment shall not exceed one thousand dollars (\$1,000) per fiscal year.

(3) The antifraud assessment is in addition to the premium taxes and fees required under existing law.

(c) This section shall apply notwithstanding the provisions of § 26-57-601 et seq., the State Insurance Department Trust Fund Act, § 23-61-701 et seq., and other provisions of Arkansas law.

History. Acts 1997, No. 337, § 3; 1999, No. 881, § 20; 2005, No. 1697, § 28; 2007, No. 827, § 190; 2017, No. 283, § 22. substituted “June 1” for “June 30” twice in (b)(1); and, in (b)(3), substituted “is” for “shall be” and deleted “now” preceding “required”.

Amendments. The 2017 amendment

23-100-106. Rules.

The Insurance Commissioner may promulgate reasonable rules deemed necessary for the administration of this chapter.

History. Acts 1997, No. 337, § 6; 2019, No. 315, § 2808. deleted “and regulations” following “rules” in the section heading and in the text.

Amendments. The 2019 amendment

CHAPTER 101

CREDITOR-PLACED INSURANCE

SECTION.	SECTION.
23-101-108. Filing, approval, and withdrawal of forms and rates.	23-101-114. Rules.
23-101-112. Remittance of premiums and payment of compensation.	

23-101-108. Filing, approval, and withdrawal of forms and rates.

(a) All policy forms and certificates of insurance to be delivered or issued for delivery in this state and the schedules of premium rates pertaining thereto shall be filed with the Insurance Commissioner.

(b) The commissioner shall within thirty (30) days after the filing of the policy forms and certificates of insurance disapprove a form that does not conform to this chapter or to other applicable provisions of the insurance statutes and rules and shall within thirty (30) days of filing disapprove a schedule of premium rates pertaining to the form if it does not conform to the standard set forth in subsection (e) of this section.

(c)(1) If the commissioner disapproves a form or schedule of premium rates in accordance with subsection (b) of this section, the commissioner shall promptly notify the insurer in writing of the disapproval, and it shall be unlawful for the insurer to issue or use the form or schedule.

(2)(A) An insurer aggrieved by any order or decision of the commissioner made without a hearing, within thirty (30) days after notice to the insurer or organization, may make written request to the commissioner for a hearing thereon.

(B) The commissioner shall hear the party or parties within twenty (20) days after receipt of the request and shall give not less than ten (10) days' written notice of the time and place of the hearing.

(C) The hearing shall be concluded within fifteen (15) days from its commencement, except that the commissioner, for good cause shown and with notice to the interested parties, may grant additional time, not to exceed thirty (30) days. Within fifteen (15) days after the hearing, the commissioner shall affirm, reverse, or modify his or her previous action, specifying his or her reasons therefor.

(D) Pending the hearing and decision thereon, the commissioner may suspend or postpone the effective date of his or her previous action.

(d) Unless the commissioner disapproves the form or schedule of premium rates in accordance with subsections (b) and (c) of this section or gives written approval of the form or schedule within thirty (30) days after the filing, the form or schedule shall be deemed approved on the thirty-first day after the filing.

(e)(1) The schedules of premium rates shall not be excessive, inadequate, or unfairly discriminatory.

(2) In determining whether a schedule of premium rates is excessive, inadequate, or unfairly discriminatory, the commissioner shall take into account past and prospective loss experience, general and administrative expenses, loss settlement and adjustment expenses, and other acquisition costs including insurance tracking costs, reserves, taxes, licenses, fees and assessments, reasonable insurer profit, and other relevant data.

(3) Rates are not unfairly discriminatory because different premiums result for different policyholders, including group policyholders, with similar loss exposures but different expense factors or similar expense factors but different loss exposures, nor are rates unfairly discriminatory if they are averaged broadly among all persons insured in this state or all persons insured under a group insurance policy.

(f)(1) The commissioner may withdraw approval of an approved form or schedule of premium rates when the commissioner would be required to disapprove the form or schedule of premium rates if it were filed at the time of the withdrawal. The withdrawal shall be in writing and shall specify the reasons for withdrawal and the effective date of the withdrawal.

(2) Within thirty (30) days after receiving the written notification of the withdrawal, an insurer adversely affected by a withdrawal may

request a hearing in the manner provided in subsection (c) of this section to determine whether the withdrawal should be annulled, modified, or confirmed.

(3) Unless the commissioner grants an extension in writing in the withdrawal or subsequently grants an extension, the withdrawal shall become effective, in the absence of a request for hearing, prospectively and not retroactively, on the ninety-first day following delivery of the notice of withdrawal and, if the request for hearing is filed, on the ninety-first day following delivery of written notice of the commissioner's determination.

(g) Forms and rates filed and approved in accordance with this section shall be deemed to be in compliance in all respects with the laws of this state.

History. Acts 1997, No. 930, § 8; 2019, No. 315, § 2809.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (b).

23-101-112. Remittance of premiums and payment of compensation.

(a)(1) The entire amount of the premium due from a creditor shall be remitted to the insurer or its producer in accordance with the insurer's requirements.

(2) No commissions may be paid to, or retained by, a person or entity not licensed and appointed in accordance with the Producer Licensing Model Act, § 23-64-501 et seq., nor to a depository institution or an affiliate of a depository institution unless appropriately licensed under § 23-64-101 et seq.

(3) For purposes of this section, "person" includes any individual, corporation, association, partnership, or other legal entity.

(b) The retention by the creditor of unearned premiums upon cancellation of the insurance without crediting to the debtor's account the amount of unearned insurance charges is prohibited.

(c) Unless allowed by § 23-64-513, rebates to the creditor of a portion of the premium charged to the debtor are prohibited as are other inducements provided to the creditor by an insurer or producer. The listing of the following activities as prohibited rebates or inducements is not intended to be restrictive, and the Insurance Commissioner may identify an activity as prohibited by rule or order:

(1) Allowing insurers or producers to purchase certificates of deposit from the creditor or to maintain accounts with the creditor at less than the market interest rates and charges that the creditor applies to other customers for deposit accounts of similar amounts and duration;

(2) Paying a commission to a person, including a creditor, who is not appropriately licensed as a producer in this state; and

(3) Purchasing or offering to purchase certificates of deposit from, or maintaining or offering to maintain deposit accounts or investment accounts with, a creditor as part of a creditor-placed insurance solicitation.

(d) Prohibited rebates or inducements do not include the providing of insurance tracking and other services incidental to the creditor-placed insurance program.

(e) Nothing contained in this section shall prohibit or restrict an insurer or producer from maintaining a demand, premium deposit, or other account or accounts with a creditor for which the insurer or producer provides insurance if the accounts pay the market interest rate and charges that the creditor applies to other customers for deposit accounts of similar amounts and duration.

History. Acts 1997, No. 930, § 12; 2001, No. 580, § 27; 2001, No. 1728, § 4; 2019, No. 315, § 2810. deleted “regulation” following “rule” in the second sentence of the introductory language of (c).

Amendments. The 2019 amendment

23-101-114. Rules.

After notice and hearing, the Insurance Commissioner may promulgate reasonable rules to carry out and effectuate the provisions of this chapter.

History. Acts 1997, No. 930, § 14; 2019, No. 315, § 2811. deleted “and regulations” following “rules” in the section heading and in the text.

Amendments. The 2019 amendment

CHAPTER 102
ARKANSAS EARTHQUAKE AUTHORITY ACT

SECTION.	SECTION.
23-102-109. Market Assistance Program.	23-102-116. Rules.
23-102-114. Notice and declination.	

23-102-109. Market Assistance Program.

(a) The Board of the Arkansas Earthquake Authority shall develop and implement a Market Assistance Program to assist insureds in procuring residential earthquake coverage in the voluntary market. This shall be accomplished by providing those seeking residential earthquake coverage with a list of insurers participating in the program.

(b) Insurers may participate in the program only after approval by the board. The board shall establish criteria which must be met by each program applicant for approval, including, but not limited to, the following minimum requirements:

(1) All applicants for earthquake coverage which have underlying homeowner, farmowner, or dwelling fire insurance coverage, or meet other criteria as determined by the board and approved by the Insurance Commissioner, shall be accepted;

(2) Residential earthquake coverage must be offered as monoline coverage;

(3) The insurer-applicant is in sound financial condition; and

(4) The insurer-applicant has retained or contracted with appropriate skilled personnel to service insureds.

(c) By rule, the commissioner may restructure the program criteria set forth in subsection (b) of this section or any other component of the program if the commissioner finds that the program is not substantially accomplishing its objective of assisting residential insureds in procuring earthquake coverage in the voluntary market and that the restructuring will be in the best interests of Arkansas citizens.

(d) Program insurers shall give ninety (90) days' notice in writing to the board and the commissioner of their withdrawal from the program.

(e) Notwithstanding any provision in § 23-64-514 regarding agent appointments, all licensed property and casualty agents shall be authorized to access and place coverage through a program insurer.

History. Acts 1999, No. 1343, § 9; 2001, No. 580, § 28; 2019, No. 315, § 2812. **Amendments.** The 2019 amendment deleted "and regulation" following "rule" in (c).

23-102-114. Notice and declination.

(a) EXISTING POLICYHOLDERS.

(1)(A) Insurers writing homeowner, farmowner, fire and allied lines, excluding commercial policies and crop hail, shall notify policyholders who do not maintain residential earthquake insurance or who maintain residential earthquake insurance at amounts less than one hundred percent (100%) of the insured value of the dwelling, of their potential eligibility for residential earthquake insurance through the Market Assistance Program or the Arkansas Earthquake Authority.

(B) The notice shall be on a form adopted by the Board of the Arkansas Earthquake Authority and approved by the Insurance Commissioner, and insurers shall verify to the board compliance with this provision.

(C) The notice shall be provided at such intervals and frequency to be determined by the board, but notice shall be given at a minimum of three (3) different times over a four-year interval.

(2) This notice from insurers shall not be deemed to provide earthquake coverage to existing policyholders who do not maintain a policy of residential earthquake insurance, nor shall the notice be deemed to increase the amounts of earthquake insurance for those policyholders who maintain coverage at less than one hundred percent (100%) of the insured value of the dwelling.

(b) NEW POLICYHOLDERS.

(1) Insurers writing homeowner, farmowner, and fire and allied lines, excluding commercial policies and crop hail, shall advise new applicants for these types of coverage of the availability of residential earthquake insurance through the program or the authority, if coverage is unavailable from the insurer.

(2) At the time of application, if an applicant chooses not to purchase residential earthquake coverage through an insurer, including program

participants or the authority, the applicant shall reject this coverage in writing on the application or any addendum thereto.

(3) Insurers shall maintain the application and any addendum thereto containing the rejection as part of the insurers' files.

History. Acts 1999, No. 1343, § 14; 2015, No. 1210, § 8.

Amendments. The 2015 amendment inserted designations (b)(1) through (b)(3); inserted "and" preceding "fire" in

(b)(1); added "At the time of application" in (b)(2); and, in (b)(3), inserted "and any addendum thereto" and substituted "the insurers" for "their."

23-102-116. Rules.

The Insurance Commissioner is authorized to promulgate such reasonable rules as are necessary to carry out the provisions of this chapter.

History. Acts 1999, No. 1343, § 16; 2019, No. 315, § 2813.

Amendments. The 2019 amendment

deleted "and regulations" following "rules" in the section heading and in the text.

CHAPTER 103

TITLE INSURANCE

SUBCHAPTER.

4. ARKANSAS TITLE INSURANCE ACT.

SUBCHAPTER 4 — ARKANSAS TITLE INSURANCE ACT

SECTION.

23-103-408. Minimum search requirements.

RESEARCH REFERENCES

ALR. Title Insurance: Exclusion of Liability for Defects, Liens, or Encumbrances Created, Suffered, Assumed, or

Agreed to by Insured, 27 A.L.R.7th Art. 6 (2018).

23-103-408. Minimum search requirements.

(a) A title insurance report or title insurance policy shall not be issued unless the title insurance agency or title insurance agent has caused to be made a search of the title from the evidence prepared from a title plant or files of the county where the property is located or from the records of the clerk or the ex officio recorder of land records of the county that maintains records relating to real estate and any interest in the county.

(b) The search shall include a review of all matters affecting the title to the property or interest to be insured for a continuous period of not less than the immediately preceding thirty (30) years.

(c) A title insurance policy shall not be issued until the title insurer or title insurance agent has caused to be made a determination of insurability of title in accordance with the title insurer’s underwriting practices.

(d) In conducting a search for the issuance of a title insurance policy, the title insurance agency and title insurance agent are acting only as agents of the title insurer and owe no duty to the insured.

(e)(1) A cause of action for negligence does not exist by an insured under a title insurance policy against the title insurance agency or title insurance agent issuing the title insurance policy or against a title insurer for lack of reasonable care in searching and disclosing the state of title to the property.

(2) The exclusive remedy of the insured for defects in title to the property that are not identified by the title search is to file a claim against the title insurance policy subject to the terms and conditions of the title insurance policy.

History. Acts 2007, No. 684, § 6; 2009, No. 1190, § 6; 2017, No. 1005, § 1.

Amendments. The 2017 amendment added (d) and (e).

23-103-413. Policyholder rights and disclosure.

CASE NOTES

Violations.

There was substantial evidence to support the revocation of the license of a title insurance company owner because there was a longtime pattern of poor record-keeping, poor management, and questionable business practices that enabled the owner’s employee to commit fraud; and the owner disregarded the sanctity of es-

crow accounts and failed to place correct information on title policies regarding his license, business name, and the required statutory notices. Moreover, the sanction was not too harsh because revocation was an available sanction for the violations that occurred. *Dyer v. Ark. Ins. Dep’t*, 2015 Ark. App. 446, 468 S.W.3d 303 (2015).

23-103-414. Record retention requirements.

CASE NOTES

Violations.

There was substantial evidence to support the revocation of the license of a title insurance company owner because there was a longtime pattern of poor record-keeping, poor management, and questionable business practices that enabled the owner’s employee to commit fraud; and the owner disregarded the sanctity of es-

crow accounts and failed to place correct information on title policies regarding his license, business name, and the required statutory notices. Moreover, the sanction was not too harsh because revocation was an available sanction for the violations that occurred. *Dyer v. Ark. Ins. Dep’t*, 2015 Ark. App. 446, 468 S.W.3d 303 (2015).

SUBTITLE 4. MISCELLANEOUS REGULATED INDUSTRIES

CHAPTER 110

ARKANSAS HORSE RACING LAW

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. ARKANSAS RACING COMMISSION.
- 4. CONDUCT OF MEETS.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

23-110-104. Disposition of license fees, fines, etc.

SECTION.

23-110-105. Racing passes.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

23-110-104. Disposition of license fees, fines, etc.

(a) All permits or license fees, excise or privilege taxes, penalties, fines, costs, and other amounts received by the Arkansas Racing Commission under the provisions of this chapter shall be general revenues and shall be deposited into the State Treasury to the credit of the State Apportionment Fund.

(b) The Treasurer of State shall allocate and transfer the general revenues referred to in subsection (a) of this section to the various State Treasury funds participating in general revenues in the respective proportions to each as provided by and to be used for the respective purposes set forth in the Revenue Stabilization Law, § 19-5-101 et seq.

(c)(1) However, any increase in the amount designated by the commission for licensing fees after January 1, 2017, shall be returned to and deposited into a cash fund of the Racing Division.

(2) With the approval of the commission, funds deposited into the cash fund under subdivision (c)(1) of this section shall be used to pay for

drug testing or other expenses related to the regulation of horse racing in Arkansas.

History. Acts 1957, No. 46, § 30; A.S.A. 1947, § 84-2756; Acts 2017, No. 425, § 1. **Amendments.** The 2017 amendment added (c).

23-110-105. Racing passes.

- (a) The Secretary of the Department of Finance and Administration shall set a maximum number of racing passes to be printed and issued annually, and it shall not be less than the number printed in 1990.
- (b)(1) Racing passes provided to and accepted by members of the General Assembly and constitutional officers are to be distributed by them to:
- (A) Their constituents, in order to provide a statewide distribution of the racing passes; and
 - (B) Persons residing outside the State of Arkansas, in order to promote tourism and advance the economic interests of the state.
- (2) The passes provided to the members of the General Assembly and constitutional officers are not for their personal use but are for redistribution as provided in this section and therefore do not constitute gifts or compensation to members of the General Assembly and constitutional officers for the purposes of any law of this state.
- (c) This section does not prohibit members of the General Assembly and constitutional officers from redistributing racing passes to other members of the General Assembly or other state constitutional officers.

History. Acts 1991, No. 1117, § 5; 1993, No. 341, § 5; 1995, No. 7, § 6; 1997, No. 73, § 6; 2001, No. 61, § 1; 2019, No. 910, § 3513. substituted “Secretary of the Department of Finance and Administration” for “Director of the Department of Finance and Administration” in (a).

Amendments. The 2019 amendment

SUBCHAPTER 2 — ARKANSAS RACING COMMISSION

SECTION.	SECTION.
23-110-201. Arkansas Racing Commission — Creation — Members.	23-110-202. Officers.
	23-110-204. Powers and duties.

Effective Dates. Acts 2015, No. 300, § 3: Mar. 4, 2015. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act adds two (2) new members to the Arkansas Racing Commission; that these members are necessary to allow the commission to perform its powers and duties in an effective and efficient manner; and that this act should become effective at the earliest opportunity to expedite the appointment of the new members of the commission. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the

Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emer-

gency clause titled ‘Funding and classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

23-110-201. Arkansas Racing Commission — Creation — Members.

(a) A commission consisting of seven (7) members, to be known as the “Arkansas Racing Commission”, is created and established.

(b) The members of the commission shall be appointed by the Governor for terms of five (5) years. The term of office shall commence on January 15 and shall end on January 14 of the fifth year following the year in which that regular term commenced.

(c) Any vacancies arising in the membership of the commission for any reason other than the expiration of the regular terms for which the members were appointed shall be filled by appointment by the Governor, to be thereafter effective until the expiration of the regular term.

(d)(1) Each congressional district shall be represented on the commission.

(2) Each member of the commission shall have been a resident of Arkansas for not less than ten (10) years next preceding the date of his or her appointment and shall be a qualified voter at the time of his or her appointment.

(3) No person who is officially connected with, employed by, financially interested in, or related to, within the third degree of consanguinity or affinity, any officer or stockholder of an applicant for, or any officer or stockholder of a holder of, a franchise applied for or issued under or pursuant to the provisions of this chapter shall be eligible to serve as a member of the commission.

(e) The Governor shall have the right to remove any member of the commission for cause.

(f) Before entering upon his or her duties, each member of the commission shall take, subscribe, and file in the office of the Secretary of State an oath to support the United States Constitution and the Arkansas Constitution and to faithfully perform the duties of the office upon which he or she is about to enter.

(g) Members of the commission shall not receive compensation for their services, but, within the limitations of appropriations made available by the General Assembly, each member may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1957, No. 46, §§ 2-4, 7; 1965, No. 176, § 1; 1975, No. 912, § 1; 1981, No. 776, § 5; A.S.A. 1947, §§ 84-2728 — 84-2730, 84-2733, 84-2733.1; Acts 1997, No. 250, § 226; 2015, No. 300, § 1.

A.C.R.C. Notes. Acts 2015, No. 300, § 2, provided:

“(a) The Governor shall appoint the two (2) new members of the Arkansas Racing Commission created by Section 1 of this act no later than thirty (30) days after the effective date of this act.

“(b) The two (2) new members appointed under subsection (a) of this sec-

tion shall draw lots so that:

“(1) The term of one (1) of the new members ends on January 14 of the fourth year following the year in which the regular term commenced; and

“(2) The term of one (1) of the new members ends on January 14 of the fifth year following the year in which the regular term commenced.

“(c) The terms of subsequent appointments to the commission shall comply with § 23-110-201(b).”

Amendments. The 2015 amendment substituted “seven (7)” for “five (5)” in (a).

23-110-202. Officers.

(a) The Governor shall from time to time select from the membership of the Arkansas Racing Commission a chair and a vice chair.

(b)(1) The Secretary of the Department of Finance and Administration shall be ex officio director of the commission unless the Governor shall designate another person from the Revenue Division to serve in that capacity, but the Director of the Arkansas Racing Commission shall not be a member of the commission nor shall he or she have a vote on matters coming before it.

(2) The Director of the Arkansas Racing Commission shall be the commission’s executive officer and shall administer the provisions of this chapter and the rules and orders established under this chapter.

(3) By resolution duly adopted, the commission may delegate to the Director of the Arkansas Racing Commission any of the powers or duties vested in or imposed upon the commission by this chapter, and the delegated powers and duties may be exercised by the Director of the Arkansas Racing Commission in the name of the commission.

(4) The Director of the Arkansas Racing Commission shall be custodian of all property held in the name of the commission and shall be the ex officio disbursing agent of all funds available for its use.

(5) The Director of the Arkansas Racing Commission shall furnish bond to the state, with a corporate surety thereon, in the penal sum of twenty-five thousand dollars (\$25,000), conditioned that he or she will faithfully perform his or her duties of office and properly account for all funds received and disbursed by him or her as Director of the Arkansas Racing Commission.

(6) Within such limitations as may be provided by appropriations therefor, the Director of the Arkansas Racing Commission may employ such assistants and other personnel as are, in his or her opinion, necessary to properly administer the provisions of this chapter.

History. Acts 1957, No. 46, §§ 5, 6; A.S.A. 1947, §§ 84-2731, 84-2732; Acts 2019, No. 315, § 2814; 2019, No. 910, § 3514.

by No. 315 deleted “regulations” following “rules” in (b)(2).

The 2019 amendment by No. 910 substituted “director” for “secretary” throughout (b); and, in (b)(1), substituted “Secre-

Amendments. The 2019 amendment

tary of the Department of Finance and Administration" for "Director of the Department of Finance and Administration"

and "Director of the Arkansas Racing Commission" for "Secretary of the Arkansas Racing Commission".

23-110-204. Powers and duties.

(a) Subject to the limitations and conditions as provided in this chapter or other applicable law, the Arkansas Racing Commission shall have sole jurisdiction over the business and the sport of horse racing in this state where the racing is permitted for any stake, purse, or reward, and, in exercising its jurisdiction, but without necessarily being limited to the following enumeration, it shall be the function, power, and duty of the commission to:

- (1) Grant franchises to conduct horse races;
 - (2) Approve dates for each racing meet and issue permits therefor;
 - (3) Issue licenses to:
 - (A) An apprentice jockey;
 - (B) An assistant trainer;
 - (C) An attendant;
 - (D) A franchise holder's employee;
 - (E) A horse owner;
 - (F) A horse trainer;
 - (G) A horseshoer;
 - (H) A jockey agent;
 - (I) A person riding horses on the grounds of the licensed racetrack, including an exercise rider, a jockey, and an outrider;
 - (J) A stable employee or contractor, including a groom and a hotwalker;
 - (K) A valet;
 - (L) A veterinarian;
 - (M) A veterinarian assistant; and
 - (N) An authorized agent, a vendor, contractor, or other person employed or involved with the care of horses or the business of horse racing on the grounds of the licensed racetrack;
 - (4) Establish by rule the license fees, not to exceed one hundred fifty dollars (\$150) per applicant, for a license under subdivision (a)(3) of this section;
 - (5) Collect and deposit into the State Treasury all fees for franchises and licenses for all taxes, other imposts, and all other moneys due the State of Arkansas in relation to horse racing;
 - (6) Hear and determine all matters properly coming before the commission and grant rehearings thereon; and
 - (7) Take such other action, not inconsistent with law, as it may deem necessary or desirable to supervise and regulate, and to effectively control in the public interest, horse racing in the State of Arkansas.
- (b)(1) The commission shall have full, complete, and sole power and authority to:
- (A) Impose fines in an amount not to exceed one hundred thousand dollars (\$100,000) per violation of a rule of the commission;

(B) Issue orders;

(C) Order the forfeiture of purse money won by a disqualified horse;

(D) Prescribe conditions under which horse racing shall be conducted by a franchise holder;

(E) Promulgate rules;

(F) Redistribute forfeited purse money; and

(G) Suspend or revoke licenses.

(2) The authority granted to the commission under this subsection shall be exercised in a reasonable manner.

(3) The holder of a franchise or a taxpayer may appeal an action of the commission to the Pulaski County Circuit Court.

(c)(1) The commission shall have no right or power to determine who shall be officers or employees of any franchise holder.

(2)(A) However, the commission may by rule require that all officers, employees, or agents of the franchise holder who are in charge of, or whose duties relate directly to, the running of races and the handling of any funds which may be wagered on any race are to be approved by the commission.

(B) The commission may compel the discharge of any official, employee, or agent of the franchise holder who fails or refuses to comply with the rules or orders of the commission, or who, in the opinion of the commission, is guilty of fraud or dishonesty.

(d) For the purpose of regulating its own procedure and carrying out its functions, powers, and duties, the commission shall have the authority from time to time to make, amend, and enforce all necessary or desirable rules not inconsistent with law.

(e)(1)(A) The commission may require an applicant to be fingerprinted to determine the applicant's suitability to be issued a license as a horse owner, horse trainer, jockey, or jockey agent.

(B) If required by the commission, the fingerprints shall be forwarded by the commission to the Division of Arkansas State Police for statewide criminal and noncriminal background checks.

(C) After completion of the statewide criminal and noncriminal background check, the fingerprints shall be forwarded by the division to the Federal Bureau of Investigation for a national criminal history record check.

(2) The applicant shall sign a release that authorizes the:

(A) Division to forward the applicant's fingerprint card to the Federal Bureau of Investigation for a national criminal history record check; and

(B) Release of the results of the statewide criminal and noncriminal background check and the national criminal history record check to the commission.

(3)(A) Any information received by the commission from the statewide criminal and noncriminal background check and the national criminal history record check of the applicant shall be kept confidential and may be used by the commission only for the purpose of

determining the applicant’s suitability to be licensed by the commission.

(B) The commission may disclose any information under subdivision (e)(3)(A) of this section to the applicant or the applicant’s duly authorized representative.

(4) No statewide criminal and noncriminal background check or national criminal history record check shall be required of an applicant for certain classes of licenses that have been exempted from investigation by rules promulgated by the commission.

(5) The commission shall promulgate rules to implement this subsection.

History. Acts 1957, No. 46, §§ 5, 8, 16; A.S.A. 1947, §§ 84-2731, 84-2734, 84-2742; Acts 1987, No. 440, § 1; 2007, No. 856, § 1; 2013, No. 350, §§ 1, 2; 2017, No. 425, § 2.

Amendments. The 2017 amendment, in (e)(1)(A), substituted “The commission

may require an applicant to” for “An applicant shall” and “the applicant’s” for “an applicant’s”; and, in (e)(1)(B), substituted “If required by the commission, the” for “The” and “commission” for “Arkansas Racing Commission”.

SUBCHAPTER 4 — CONDUCT OF MEETS

SECTION.

- 23-110-405. Wagering — Penalty for improper wagering.
- 23-110-407. Disposition of wagering money — Portion for franchise holder.
- 23-110-409. Disposition of wagering money — Arkansas Racing

SECTION.

- Commission Purse and Awards Fund.
- 23-110-413. Access to meets, books, records, etc.

23-110-405. Wagering — Penalty for improper wagering.

(a)(1) Any franchise holder conducting a horse racing meet may provide a place or places in the race meeting grounds or enclosure at which it may conduct and supervise the pari-mutuel or certificate system of wagering.

(2) If conducted under the provisions of this chapter, the pari-mutuel or certificate method of wagering shall not under any circumstances be held or construed to be unlawful, all other laws or parts of laws of the State of Arkansas to the contrary notwithstanding.

(b)(1) With the prior approval of the Arkansas Racing Commission and consistent with applicable federal law, a franchise holder may enter into agreements and arrangements with other parties pursuant to which:

(A) Its patrons may wager on races run at other race tracks that are shown live or in any other manner approved by the commission, by television, or otherwise, at locations on the grounds at the Arkansas race track at any time or times during the calendar year; and

(B) Its races are shown live or in any other manner approved by the commission at other race tracks and locations.

(2) Such agreements and arrangements shall specify all financial, wagering, distribution, and other details that shall govern. To that end, the provisions of §§ 23-110-402 and 23-110-407 and any other inconsistent provisions shall not be applicable to such agreements and arrangements.

(3)(A) For all races simulcast to the grounds of the franchise holder's Arkansas race track from other race tracks and races conducted in the past and rebroadcast by electronic means and shown on a delayed or replayed basis on the grounds of the franchise holder's Arkansas race track under subdivision (b)(1) of this section, the franchise holder shall withhold and pay to the commission as a privilege tax for the use and benefit of the State of Arkansas one percent (1%) of all moneys wagered on the races on the grounds of the franchise holder's Arkansas race track.

(B) The difference between the two percent (2%) rate being withheld and so paid by the franchise holder to the State of Arkansas on wagers on the races described in subdivision (b)(3)(A) of this section under rules of the commission in effect prior to the enactment of this subdivision (b)(3) and the one percent (1%) rate established in subdivision (b)(3)(A) of this section shall be withheld by the franchise holder from wagers on such races and set aside by the franchise holder in a separate account to be used only for purses and construction, for debt service on money borrowed by the franchise holder for construction, or for promotions to encourage patronage and tourism, in accordance with the provisions of § 23-110-407(a)(3).

(c) No franchise holder shall permit any person under eighteen (18) years of age to be a patron of the pari-mutuel or certificate system of wagering conducted or supervised by it.

(d)(1)(A) However, nothing contained in this section shall be construed to permit the pari-mutuel or certificate method of wagering upon any race track unless the track is licensed as provided by this chapter.

(B) It is declared to be unlawful for any franchise holder to permit, conduct, or supervise upon any race track any pari-mutuel or certificate method of wagering except in accordance with the provisions of this chapter.

(2)(A) There shall be no wagering on the results of any races except under the pari-mutuel or certificate method of wagering as provided for in this section, and then only by the installation and use of equipment approved by the commission.

(B) Any franchise holder using or permitting wagering or any person wagering under any other method at a licensed race track shall be guilty of a Class D felony.

(e)(1) With the prior approval of the commission and pursuant to rules adopted by the commission, a franchise holder's patrons with money on deposit in an account with the franchise holder may place wagers by communication through telephone or other mobile device or through other electronic means on races conducted at the franchise

holder's race track facility and horse races or greyhound races at other racetracks, whether or not the patron is located on the grounds of the franchise holder's race track facility when placing the wager.

(2) Wagers accepted by the franchise holder under this subsection shall be treated for all purposes under this chapter as a wager made by the patron on the grounds of the franchise holder's race track facility.

History. Acts 1957, No. 46, § 22; A.S.A. 1947, § 84-2748; Acts 1987, No. 440, § 3; 1989, No. 12, § 2; 1999, No. 10, § 1; 2001, No. 1294, § 2; 2005, No. 1994, § 485; 2013, No. 350, § 5; 2019, No. 315, § 2815.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (b)(3)(B).

23-110-407. Disposition of wagering money — Portion for franchise holder.

(a)(1) At the racing meet held in calendar year 1989 and at the racing meet held in each calendar year thereafter, the franchise holder shall withhold not more than seventeen percent (17%) and not less than five and one-half percent (5.5%) of all moneys wagered on races in which the wagerer is required to select one (1) horse and not more than twenty-one percent (21%) and not less than five and one-half percent (5.5%) of all moneys wagered on races in which the wagerer is required to select more than one (1) horse. Within those limits, the exact amounts to be withheld shall be specified in the wagering program requested by the franchise holder and approved by the Arkansas Racing Commission as specified in § 23-110-402.

(2) From the amounts withheld pursuant to the provisions of subdivision (a)(1) of this section, the franchise holder shall pay the following:

(A)(i) At all racing meets conducted in calendar years 1989 — 2001, an amount equal to two and one-half percent (2.5%) of all moneys wagered on all races shall be paid to the commission as a privilege tax for the use and benefit of the State of Arkansas.

(ii) At all racing meets conducted in calendar year 2002 and in each calendar year thereafter, an amount equal to one percent (1%) of all moneys wagered on all races shall be paid to the commission as a privilege tax for the use and benefit of the State of Arkansas; and

(B)(i) In the case of all racing meets for thoroughbred horses, an amount equal to one-half of one percent (0.5%) of all moneys wagered shall be paid to the commission for deposit into the Arkansas Racing Commission Purse and Awards Fund to be used for purse supplements, breeders' awards, owners' awards, and stallion awards as hereinafter specified.

(ii) The number of Arkansas-bred races shall be a matter for negotiation between the franchise holder and the Arkansas Thoroughbred Breeders and Horsemen's Association.

(3) The remainder of the amounts withheld pursuant to the provisions of subdivision (a)(1) of this section shall be retained by the franchise holder for use as follows:

(A)(i) For all racing meets:

(a) In calendar years 1989 — 2001, three percent (3%) of all moneys wagered on races in which the wagerer is required to select one (1) horse, and two percent (2%) of all moneys wagered on races where the wagerer is required to select more than one (1) horse, i.e., the purse, construction, and patronage and tourism promotion moneys; and

(b) In calendar year 2002 and in each calendar year thereafter, four and one-half percent (4.5%) of all moneys wagered on races in which the wagerer is required to select one (1) horse, and three and one-half percent (3.5%) of all moneys wagered on races in which the wagerer is required to select more than one (1) horse, i.e., the purse, construction, and patronage and tourism promotion moneys, shall be set aside by the franchise holder in a separate account to be used only for purses and construction, for debt service on money borrowed by the franchise holder for construction, or for promotions to encourage patronage and tourism.

(ii)(a) As used in this section, the term "construction":

(1) Shall include all items and expenditures incurred in keeping the overall racing facility in the best possible condition for the patrons, horsemen, and franchise holder, including, without limitation, land acquisition, provided that the franchise holder submits plans for utilizing the acquired land for an approved purpose within five (5) years of the acquisition, new construction with related equipment, and reconstruction, renovation, reconditioning, and repairing of facilities with related equipment;

(2) Shall not include ordinary or routine maintenance of the overall racing facility and shall not include the construction or improvement of areas of the racing facility not generally accessible by, or used for the benefit of, either the horsemen or patrons, or both; and

(3) Shall not apply to office furniture, office telephones, or other office equipment primarily devoted to the use of the franchise holder and providing little or no benefit to either horsemen or patrons, or both.

(b) The franchise holder may be reimbursed only for construction and patronage and tourism promotion expenditures from the purse, construction, and patronage and tourism promotion fund after submitting a claim that itemizes each expenditure listing the specific expenditure and the payee of the expenditure and stating in specific terms with respect to construction expenditures how the expenditure jointly benefits the patrons, horsemen, and franchise holder.

(iii)(a) The commission shall have jurisdiction and shall seek the assistance of the Department of Finance and Administration to check and verify compliance by the franchise holder with the provisions of this subdivision (a)(3). The commission shall make periodic determinations as to compliance under such rules as the commission shall adopt.

(b) The franchise holder must deliver to the department any documents reasonably requested to check and verify compliance with

this subdivision (a)(3), within thirty (30) days of receiving a written request for the documents. If the department does not receive the requested documents within the time period provided, the Secretary of the Department of Finance and Administration shall notify the commission, and no reimbursement shall be approved from the fund until the documents are delivered.

(c) In the case of construction and patronage and tourism promotion, the commission may use a multiyear approach based on a multiyear program being undertaken by the franchise holder so that accountability for expenditures may be based on expenditures made during the entire multiyear period out of the purse, construction, and patronage and tourism promotion moneys derived during the multiyear period, provided that the multiyear period shall not exceed five (5) years, unless the commission makes a specific determination that a longer period is necessary to finance long-term construction projects for the joint benefit of patrons, horsemen, and the franchise holder.

(d) The franchise holder may seek prior approval from the commission for expenditures. The application for the approval must contain the information required by subdivision (a)(3)(A)(ii)(b) of this section. The initial approval will be subject to a final approval by the commission that the expenditures were made for the approved purposes in compliance with the requirements of this subdivision (a)(3), and the commission shall seek assistance from the department to verify that the expenditures were made for the approved purposes.

(e) If there is a final determination that any of the purse, construction, and patronage and tourism promotion moneys have not been used for the purposes specified in this subdivision (a)(3), the franchise holder shall pay the amount equal to any moneys used for an unauthorized purpose to the commission for the use and benefit of the State of Arkansas.

(iv)(a) The purse, construction, and patronage and tourism promotion moneys shall not be subject to the provisions of any contract or agreement between the franchise holder and any organization representing horsemen. To that end, any contractual obligations for the use of moneys for purses shall not apply to any expenditures for construction or patronage and tourism promotion out of the purse, construction, and patronage and tourism promotion moneys.

(b) Any expenditures for purses out of the purse, construction, and patronage and tourism promotion moneys shall be in addition to contractual purse obligations affecting moneys other than the purse, construction, and patronage and tourism promotion moneys.

(c) The franchise holder shall determine the amount of the purse, construction, and patronage and tourism promotion moneys to be used for the authorized purposes, except that at least one-half ($\frac{1}{2}$) of the purse, construction, and patronage and tourism promotion moneys must be used for purses;

(v) If the amount of approved expenditures exceeds the balance of the purse, construction, and patronage and tourism promotion fund,

the excess amount will remain payable to the franchise holder out of the purse, construction, and patronage and tourism promotion fund. However, with respect to expenditures incurred by the franchise holder on or after January 1, 2001, interest shall not accrue on the deficit balance, unless the interest is payable to an unrelated third-party lender with respect to indebtedness directly incurred to finance construction expenditures as contemplated by this subdivision (a)(3);

(B) The remainder of the amounts withheld pursuant to the provisions of subdivision (a)(1) of this section shall be retained by the franchise holder for its own use and benefit; and

(C) One percent (1%) of the moneys set aside by the franchise holder for purses from the moneys retained by it pursuant to the provisions of subdivision (a)(3) of this section, including that portion of the purse, construction, and patronage and tourism promotion moneys actually used for purses, shall be paid from the moneys set aside for purses to the Arkansas Horsemen's Benevolent and Protective Association to be used for its benevolent purposes. The payment shall be made by the franchise holder at the conclusion of each racing meet.

(b) All payments to the commission under subdivision (a)(2)(B) of this section and all payments to a city or town and a county shall be made by the franchise holder at the conclusion of the racing meet involved. Such payments to a city or town and a county shall be used by the city, town, or county for such lawful purposes as the city, town, or county shall determine. All payments due the State of Arkansas under subdivision (a)(2)(A) of this section shall be paid to the commission daily.

History. Acts 1957, No. 46, § 23; 1965, No. 142, § 1; 1967, No. 130, § 3; 1983, No. 251, §§ 2, 3; A.S.A. 1947, § 84-2749; Acts 1987, No. 440, § 4; 1989, No. 12, § 3; 1999, No. 1576, § 1; 2001, No. 1294, § 1; 2019, No. 315, § 2816.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (a)(3)(A)(iii)(a).

23-110-409. Disposition of wagering money — Arkansas Racing Commission Purse and Awards Fund.

(a) The Arkansas Racing Commission Purse and Awards Fund shall be deposited by the Arkansas Racing Commission in such banks as the commission shall determine.

(b)(1) In order to promote and encourage the development of thoroughbred horse breeding in Arkansas with its attendant economic benefits to the state and its citizens, moneys in the fund are classified as special revenues and shall be disbursed by the commission for purse supplements and breeders' awards in accordance with a written program prepared and presented to it by the Arkansas Thoroughbred Breeders and Horsemen's Association.

(2) Breeders' awards may include awards to owners of registered Arkansas-bred thoroughbred horses, owners of registered Arkansas

thoroughbred broodmares, and owners of registered Arkansas thoroughbred stallions.

(3) Registered Arkansas-bred thoroughbred horses, registered Arkansas thoroughbred broodmare, registered Arkansas thoroughbred stallion, foal registration, broodmare registration and stallion registration, eligibility to participate in the fund, and eligibility to participate in races that are restricted to registered Arkansas-bred thoroughbred horses shall be determined and made in accordance with registration rules, including reasonable time deadlines and fee schedules, adopted by the Arkansas Thoroughbred Breeders' and Horsemen's Association and approved by the commission.

(c) The franchise holder shall be solely responsible for writing the various races for each racing meet.

History. Acts 1957, No. 46, § 23; 1967, No. 130, § 3; 1983, No. 251, §§ 2, 3; A.S.A. 1947, § 84-2749; Acts 1988 (3rd Ex. Sess.), No. 14, § 1; 1989, No. 12, § 4; 2019, No. 315, § 2817.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (b)(3).

23-110-413. Access to meets, books, records, etc.

(a) The Arkansas Racing Commission shall at all times have access to any portion of the space or enclosure where a race meet is held, including the space or enclosure where the pari-mutuel or certificate system of wagering is conducted or supervised at any racing meet, for the purpose of ascertaining whether or not the franchise holder is retaining only the commission provided in this chapter.

(b) The commission shall have full and free access to the books, records, machines, and papers pertaining to pari-mutuel or certificate method of wagering, and admission tickets.

(c) The commission may also at any time investigate and ascertain whether or not any of the provisions of this chapter or the rules of the commission are being violated at the race track or enclosure.

History. Acts 1957, No. 46, § 27; A.S.A. 1947, § 84-2753; Acts 2019, No. 315, § 2818.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (c).

CHAPTER 111

ARKANSAS GREYHOUND RACING LAW

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ARKANSAS RACING COMMISSION.
5. CONDUCT OF MEETS.

SUBCHAPTER 1 — GENERAL PROVISIONS**SECTION.**

23-111-104. Disposition of funds.

23-111-105. Racing passes.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

23-111-104. Disposition of funds.

(a) All franchise or license fees, excise or privilege taxes, penalties, fines, costs, and other amounts received by the Arkansas Racing Commission under the provisions of this chapter shall be general revenues and shall be deposited into the State Treasury to the credit of the State Apportionment Fund.

(b) The Treasurer of State shall allocate and transfer the money to the various State Treasury funds participating in general revenues in the respective proportions to each as provided by, and to be used for the respective purposes set forth in, the Revenue Stabilization Law, § 19-5-101 et seq.

(c)(1) However, any increase in the amount designated by the commission for licensing fees after January 1, 2017, shall be returned to and deposited into a cash fund of the Racing Division.

(2) With the approval of the commission, funds deposited into the cash fund under subdivision (c)(1) of this section shall be used to pay for drug testing or other expenses related to the regulation of dog racing in Arkansas.

History. Acts 1957, No. 191, § 27; A.S.A. 1947, § 84-2842; Acts 2017, No. 425, § 3.

Amendments. The 2017 amendment added (c).

23-111-105. Racing passes.

(a) The Secretary of the Department of Finance and Administration shall set a maximum number of racing passes to be printed and issued annually, and it shall not be fewer than the number printed in 1990.

(b)(1) Racing passes provided to and accepted by members of the General Assembly and constitutional officers are to be distributed by them to their constituents in order to provide for a statewide distribution of the racing passes and to persons residing outside the State of Arkansas in order to promote tourism and advance the economic interests of the state.

(2) The passes provided to the members of the General Assembly and constitutional officers are not for their personal use but are for redistribution as provided in this section and, therefore, do not constitute gifts or compensation to members of the General Assembly and constitutional officers for the purposes of any law of this state.

(3) This section does not prohibit members of the General Assembly and constitutional officers from redistributing racing passes to other members of the General Assembly or other state constitutional officers.

History. Acts 1991, No. 1117, § 5; 1993, No. 341, § 5; 1995, No. 7, § 6; 1997, No. 73, § 6; 2001, No. 408, § 1; 2019, No. 910, § 3515.

substituted "Secretary of the Department of Finance and Administration" for "Director of the Department of Finance and Administration" in (a).

Amendments. The 2019 amendment

SUBCHAPTER 2 — ARKANSAS RACING COMMISSION

SECTION.

23-111-203. Powers and duties generally.

23-111-204. Regulatory authority —
Limitations.

23-111-203. Powers and duties generally.

(a) Subject to the limitations and conditions as in this chapter or other applicable law provided, the Arkansas Racing Commission shall have sole jurisdiction over the business and the sport of greyhound racing in the state where the racing is permitted for any stake, purse, or reward.

(b) In exercising the jurisdiction as provided in subsection (a) of this section, but without necessarily being limited to the following, it shall be the function, power, and duty of the commission to:

- (1) Grant franchises to conduct greyhound races;
- (2) Approve dates for each racing meet and issue permits therefor;
- (3) Issue licenses to:
 - (A) An attendant;
 - (B) A franchise holder's employee;
 - (C) A greyhound handler;
 - (D) A kennel employee;
 - (E) A kennel helper;
 - (F) A greyhound owner;
 - (G) A greyhound trainer;
 - (H) An assistant greyhound trainer;
 - (I) A veterinarian;
 - (J) A veterinarian assistant; and

(K) An authorized agent, contractor, vendor, or other person employed or involved with the care of greyhounds or greyhound racing on the grounds of the licensed racetrack;

(4) Establish by rule the license fees, not to exceed one hundred fifty dollars (\$150) per applicant, for a license issued under subdivision (b)(3) of this section;

(5) Collect and deposit into the State Treasury all fees for franchises and licenses, all taxes and other imposts, and all other moneys due the State of Arkansas in relation to greyhound racing;

(6) Hear and determine all matters properly coming before the commission and grant rehearings thereon; and

(7)(A) Take other action, not inconsistent with law, as it may deem necessary or desirable to supervise and regulate and to effectively control in the public interest greyhound racing in the State of Arkansas, including without limitation:

(i) Imposing fines in an amount not to exceed one hundred thousand dollars (\$100,000) per violation of a rule of the commission;

(ii) Issuing orders;

(iii) Ordering the forfeiture of purse money won by a disqualified greyhound;

(iv) Prescribing conditions under which greyhound racing shall be conducted by a franchise holder;

(v) Promulgating rules;

(vi) Redistributing forfeited purse money; and

(vii) Suspending or revoking licenses.

(B) The commission shall exercise its authority under this subsection in a reasonable manner.

(C) The holder of a franchise or a taxpayer may appeal an action of the commission to the Pulaski County Circuit Court.

(c)(1)(A) The commission may require an applicant to be fingerprinted to determine the applicant's suitability to be issued a license as a greyhound owner or trainer.

(B) If required by the commission, the fingerprints shall be forwarded by the commission to the Division of Arkansas State Police for statewide criminal and noncriminal background checks.

(C) After completion of the statewide criminal and noncriminal background checks, the fingerprints shall be forwarded by the division to the Federal Bureau of Investigation for a national criminal history record check.

(2) The applicant shall sign a release that authorizes the:

(A) Division to forward the applicant's fingerprint card to the Federal Bureau of Investigation for a national criminal history record check; and

(B) Release of the results of the statewide criminal and noncriminal background checks and the national criminal history record check to the commission.

(3)(A) Any information received by the commission from the statewide criminal and noncriminal background check and the national

criminal history record check shall be kept confidential and may be used by the commission only for the purpose of determining the applicant's suitability to be licensed by the commission.

(B) The commission may disclose any information under subdivision (c)(3)(A) of this section to the applicant or the applicant's duly authorized representative.

(4) No statewide criminal and noncriminal background checks or national criminal history record check shall be required of applicants for certain classes of licenses that have been exempted from investigation by rules promulgated by the commission.

(5) The commission shall promulgate rules to implement this subsection.

History. Acts 1957, No. 191, § 4; A.S.A. 1947, § 84-2819; Acts 2007, No. 856, § 3; 2013, No. 350, §§ 3, 4; 2017, No. 425, § 4. **Amendments.** The 2017 amendment, in (c)(1)(A), substituted "The commission may require an applicant to" for "An applicant shall" and "the applicant's" for "an applicant's"; and substituted "If required by the commission, the" for "The" in (c)(1)(B).

23-111-204. Regulatory authority — Limitations.

(a) The Arkansas Racing Commission shall have full, complete, and sole power and authority to promulgate rules and orders and prescribe conditions under which greyhound racing shall be conducted by a franchise holder, but the power and authority so granted shall be exercised by the commission in a reasonable manner. The holder of any franchise, or any taxpayer, shall have redress to the Pulaski County Circuit Court for any wrong committed by the commission in the exercise of the power and authority granted pursuant to this section.

(b)(1) The commission shall have no right or power to determine who shall be officers or employees of any franchise holder.

(2) However, the commission may by rule require that all officers and employees, or agents, of the franchise holder who are in charge of, or whose duties relate directly to, the running of races, and the handling of any funds which may be wagered on any race, be approved by the commission.

(3) The commission may compel the discharge of any official, employee, or agent of the franchise holder who fails or refuses to comply with the rules or orders of the commission or who, in the opinion of the commission, is guilty of fraud or dishonesty.

History. Acts 1957, No. 191, § 12; A.S.A. 1947, § 84-2827; Acts 2019, No. 315, § 2819. **Amendments.** The 2019 amendment deleted "regulations" following "rules" in (a) and (b)(3).

SUBCHAPTER 5 — CONDUCT OF MEETS

SECTION.

23-111-502. Racing days and hours generally.

SECTION.

23-111-503. Additional racing days for benefit of city general fund

SECTION.

- and Division of Developmental Disabilities Services.
- 23-111-505. Additional racing days for benefit of indigent patients, etc.
- 23-111-508. Wagering.
- 23-111-509. Disposition of wagering money.
- 23-111-512. Commission's access to meets, books, records, etc.

SECTION.

- 23-111-515. Additional racing days for the benefit of small municipalities and community colleges.
- 23-111-517. Disposition of pari-mutuel tax revenue.
- 23-111-518. Legislative intent — Definitions — Payable winnings agreements.

Effective Dates. Acts 2016, No. 140, § 17: July 1, 2016. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2016 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the legislative session, the delay in the effective date of this Act beyond July 1, 2016 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2016."

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is

found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

23-111-502. Racing days and hours generally.

(a)(1) Upon application of the dog racing franchise holder, the Arkansas Racing Commission may authorize each dog racing franchise holder to conduct during any calendar year greyhound racing on the days and during the hours as determined by the commission and as set forth in its rules.

(2) The commission's rules shall be in the best interests of the dog racing franchisee, kennel owners, and greyhound racing in the State of Arkansas.

(3) Greyhound racing on Easter Sunday or Christmas Day is prohibited.

(b) The racing days provided for under §§ 23-111-503 — 23-111-505 shall be conducted on the days and during the hours determined by the commission under subsection (a) of this section.

History. Acts 1985, No. 924, § 1; A.S.A. 1947, § 84-2848; Acts 1987, No. 383, § 1; 1989, No. 238, § 1; 1995, No. 342, § 1; 1995, No. 347, § 1; 2013, No. 351, § 1; 2019, No. 315, § 2820.

Amendments. The 2019 amendment deleted “and regulations” following “rules” in (a)(2).

23-111-503. Additional racing days for benefit of city general fund and Division of Developmental Disabilities Services.

(a) The Arkansas Racing Commission is authorized to allow each dog racing franchise holder to conduct three (3) additional days of racing at any dog racing meet. The franchise holder shall agree that the net proceeds derived from the additional days shall be credited as follows:

(1) One-third ($\frac{1}{3}$) to be deposited with the city treasurer or collector of the city in which the dog racing track is located for credit to the city general fund to be used for charitable purposes only, as determined by the mayor and governing body; and

(2) Two-thirds ($\frac{2}{3}$) to be deposited with the Treasurer of State as special revenue to be used for the sole benefit for community programs of the Division of Developmental Disabilities Services.

(b) Employees of the dog racing track shall be allowed to donate their services for the additional days of dog racing allowed by the commission under this section.

(c) Net proceeds derived from the additional days of dog racing shall be the proceeds derived from the pari-mutuel wagering at, and admissions to, the dog racing track less the cost of salaries, if any, of all employees, fuel, lights, purses, taxes, and other fees and costs incurred by the franchise holder in conducting the additional days of racing.

(d) The commission shall establish appropriate rules to assure compliance with the provisions of this section and shall audit and verify all receipts and expenditures of the franchise holder in determining compliance with this section.

History. Acts 1985, No. 924, § 2; A.S.A. 1947, § 84-2849; Acts 1987, No. 383, § 2; 2019, No. 315, § 2821.

Amendments. The 2019 amendment deleted “and regulations” following “rules” in (d).

23-111-505. Additional racing days for benefit of indigent patients, etc.

(a) The Arkansas Racing Commission is authorized to allow each dog racing franchise holder to conduct fifteen (15) additional days of racing during each twelve-month period. The additional days of racing may be divided between each of the two (2) racing meets allowed by § 23-111-502, or all the additional days of racing may be added to a single racing meet as determined by the commission. In the event the additional days

allowed by the commission fall upon a Saturday or Saturdays, then the franchise holder, at its option, may conduct daylight racing as authorized for a regular racing meet.

(b)(1) All revenue derived from the pari-mutuel tax at the fifteen (15) additional days of racing authorized by subsection (a) of this section after moneys have been remitted by the franchise holder to Arkansas State University Mid-South as provided by § 23-111-517 shall be deposited with the Treasurer of State as special revenue for credit to the Indigent Patient's Fund, to be used by Mississippi County, Poinsett County, Cross County, St. Francis County, and Lee County to defray the cost of hospitalization and other medical services of indigent Arkansas patients in healthcare facilities for which the county has not received total reimbursement.

(2) Each county shall certify to the Chief Fiscal Officer of the State the amount of the unreimbursed medical expenses under such procedures and such detail as required by the Department of Finance and Administration.

(3) The amount available to each county shall be no more than one-fifth ($\frac{1}{5}$) of the total funds available or the amount certified of unreimbursed medical expenses, whichever is less.

(c) The commission is authorized to allow each dog racing franchise holder to conduct two (2) additional days of racing at any dog racing meet. The net proceeds derived from these additional days shall be deposited with the city treasurer or collector of the city in which the dog racing track is located for credit to the city general fund to be used for providing assistance and relief to disaster victims, indigent persons, organizations which assist such persons, and for education purposes.

History. Acts 1985, No. 924, § 4; A.S.A. 1947, § 84-2851; Acts 1987, No. 383, § 3; 1989, No. 238, § 2; 2001, No. 1666, § 22; 2016, No. 140, § 13.

Amendments. The 2016 amendment substituted "Arkansas State University Mid-South" for "Mid-South Community College" in (b)(1).

23-111-508. Wagering.

(a)(1) Any franchise holder conducting a greyhound racing meet may provide places in the race meeting grounds, or enclosure, at which it may conduct and supervise the pari-mutuel or certificate system of wagering by patrons on the races conducted by the franchise holder at the meeting.

(2) The pari-mutuel or certificate method of wagering upon races held at the race track, within the race track, and at the racing meet shall not under any circumstances, if conducted under the provisions of this chapter, be held or construed to be unlawful, all other laws or parts of laws of the State of Arkansas to the contrary notwithstanding.

(b) No other place or method of wagering shall be used or permitted by the franchise holder, unless permitted under subsection (d) or subsection (e) of this section, nor shall the pari-mutuel or certificate system of wagering be conducted on any races except races at the race

track where the franchise holder holds a current license issued by the Arkansas Racing Commission.

(c) No franchise holder shall permit any minor to be a patron of the pari-mutuel or certificate system of wagering conducted or supervised by it.

(d)(1)(A) However, nothing contained in this section shall be construed to permit the pari-mutuel or certificate method of wagering upon any race track unless the track is licensed as provided by this chapter.

(B) It is declared to be unlawful for any franchise holder to permit, conduct, or supervise any pari-mutuel or certificate method of wagering upon any race track except in accordance with the provisions of this chapter.

(2) There shall be no wagering on the results of any races except under the pari-mutuel or certificate method of wagering, as provided in this chapter, and then only by the installation and use of equipment approved by the commission.

(3) In addition to the pari-mutuel or certificate system of wagering as authorized by this chapter, the commission is authorized and directed to establish and adopt rules permitting the conduct of pari-mutuel or certificate system of wagering upon racing, either horse or greyhound, shown live or in any other manner approved by the commission by television or otherwise to or from the premises of the franchise holder.

(4) Any franchise holder using or permitting wagering or any person wagering under any other method at a licensed race track shall be guilty of a Class D felony for each such offense.

(e)(1) With the prior approval of the commission and pursuant to rules adopted by the commission, a franchise holder's patrons with money on deposit in an account with the franchise holder may place wagers by communication through telephone or other mobile device or through other electronic means on races conducted at the franchise holder's race track facility and horse races or greyhound races at other racetracks, whether or not the patron is located on the grounds of the franchise holder's race track facility when placing the wager.

(2) Wagers accepted by the franchise holder under this subsection shall be treated for all purposes under this chapter as a wager made by the patron on the grounds of the franchise holder's race track facility.

History. Acts 1957, No. 191, § 18; A.S.A. 1947, § 84-2833; Acts 1987, No. 383, § 5; 1989, No. 238, § 3; 1999, No. 473, § 1; 2005, No. 1994, § 486; 2013, No. 350, §§ 6, 7; 2019, No. 315, § 2822.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (d)(3).

23-111-509. Disposition of wagering money.

(a) Each franchise holder conducting a racing meet under the provisions of this chapter shall keep its books and records in such manner as

to clearly show the total amount of moneys wagered on each race held or conducted at each meet and the disposition of the moneys.

(b)(1) In the calendar year 1995 and each calendar year thereafter, the franchise holder shall withhold and retain for its own use and benefit sixteen percent (16%) of all moneys wagered on live, on-premises races up to and including one hundred twenty-five million dollars (\$125,000,000) and twelve percent (12%) of all moneys wagered on live, on-premises races in excess of one hundred twenty-five million dollars (\$125,000,000).

(2)(A) From the amount withheld and retained by the franchise holder, the franchise holder shall agree that the following credits will be made in the following percentage amounts of all moneys wagered on live, on-premises races up to and including one hundred twenty-five million dollars (\$125,000,000) per calendar year, which shall be in addition to any other credits or payments:

(i) Seven-eighths of one percent (.875%) to be used by the franchise holder for supplements for increasing purses awarded at races conducted at the franchise holder's facility;

(ii) Three-eighths of one percent (.375%) to the institutions or funds described in §§ 23-111-503 — 23-111-505 and 23-111-515 on a proportionate basis;

(iii) One-half of one percent (0.5%) to be used by the franchise holder for capital improvements to be made by the franchise holder at the racing facility; and

(iv) One-half of one percent (0.5%) to be used by the franchise holder for promotions to be conducted by the franchise holder to encourage patronage and tourism.

(B) These credits will not accrue on moneys wagered on live, on-premises races in excess of one hundred twenty-five million dollars (\$125,000,000) per calendar year.

(C) The Arkansas Racing Commission may audit and verify receipts and expenditures of the franchise holder in determining compliance with this subdivision (b)(2).

(D) If there is a final determination by the commission that any of the credits or payments provided in this subsection have not been used for the purposes specified in this section, the franchise holder shall pay the amount equal to any moneys used for an unauthorized purpose to the commission for the use and benefit of the State of Arkansas.

(3)(A) "Capital improvements" as used in this section shall include all items and expenditures incurred for new construction with related equipment, reconstruction, renovation, reconditioning, and repairing of facilities with related equipment, or for debt service on money borrowed by the franchise holder for those enumerated purposes.

(B) In the case of capital improvements, the commission may use a multiyear approach based on a multiyear program being undertaken by the franchise holder so that accountability for expenditures may be based on expenditures made during the entire multiyear

period out of the capital improvement moneys derived during the multiyear period.

(c)(1) In the calendar year 1995 and each calendar year thereafter, for all racing meets conducted by the franchise holder, the franchise holder shall withhold and pay to the commission for the use and benefit of the State of Arkansas, as a privilege tax:

(A) Three percent (3%) of all moneys wagered on live, on-premises races up to and including one hundred twenty-five million dollars (\$125,000,000), together with one-third ($\frac{1}{3}$) of the odd cents or breaks; and

(B) Seven percent (7%) of all moneys wagered on live, on-premises races in excess of one hundred twenty-five million dollars (\$125,000,000), together with one-third ($\frac{1}{3}$) of the odd cents or breaks.

(2)(A) For all races simulcast to the grounds of the franchise holder's Arkansas race track from other race tracks and races conducted in the past and rebroadcast by electronic means and shown on a delayed or replayed basis on the grounds of the franchise holder's Arkansas race track under § 23-111-508(d)(3), the franchise holder shall withhold and pay to the commission for the use and benefit of the State of Arkansas, as a privilege tax, one percent (1%) of all moneys wagered on such races on the grounds of a franchise holder's Arkansas race track.

(B) From the one percent (1%) reduction in the simulcast privilege tax provided for in this section, the franchise holder shall agree that the following credits shall be made in the following percentage amounts, which shall be in addition to any other credits for payments:

(i) One-fourth of one percent (0.25%) to be used by the franchise holder for supplements for increasing purses awarded at races conducted at the franchise holder's facility;

(ii) One-fourth of one percent (0.25%) to be used by the franchise holder for promotions conducted by the franchise holder to encourage patronage and tourism;

(iii) One-fourth of one percent (0.25%) to be used by the franchise holder for capital improvements made by the franchise holder at the racing facility;

(iv) One-fifth of one percent (0.20%) to be used by the franchise holder to directly offset increased simulcasting expenses over and above those incurred during calendar year 2000, including interface fees, host signal fees, licensing fees, and equipment costs related to simulcast. The franchise holder shall provide such information necessary to reflect the increase in simulcast expenses. Any portion of this amount not needed to offset increased simulcast expenses shall be paid to the commission for the use and benefit of the State of Arkansas; and

(v) Five one-hundredths of one percent (0.05%) to be distributed as provided in § 23-111-515(b)(1)(B).

(C)(i) The commission shall seek the assistance of the Department of Finance and Administration to audit and verify receipts and expenditures of the franchise holder in determining compliance with this section. The franchise holder must deliver to the department any documents requested to check and verify compliance with this section within thirty (30) days of receiving a written request for the documents. If the department does not receive the requested documents within the time provided, the Secretary of the Department of Finance and Administration shall notify the commission, which shall issue an order to show cause why such documents have not been provided.

(ii) The franchise holder shall not be permitted credit for expenditures under this section until the franchise holder submits documentation of each expenditure listing the specific expenditure and the payee of the expenditure and stating in specific terms the benefit created by the expenditure.

(iii) In the case of patronage and tourism promotion and capital improvements, the commission may use a multiyear approach based on a multiyear program's being undertaken by the franchise holder so that accountability for expenditures may be based on expenditures made during the entire multiyear period out of the patronage and tourism promotion and capital improvement moneys derived during the multiyear period, provided that the multiyear period shall not exceed five (5) years, unless the commission makes a specific determination that a longer period is necessary to finance long-term construction projects for the joint benefit of patrons, dogmen, and the franchise holder.

(iv) The franchise holder may seek prior approval of expenditures from the commission for expenditures. The application for such approval must contain the information required by this section. The prior approval will be subject to final verification by the department and approval by the commission that the expenditure meets the requirements of this section.

(3) The licensee shall withhold no more than nineteen percent (19%) of the total moneys wagered in simulcast racing, except when the state of the host race meet allows for withholding a greater percentage, then the licensee shall withhold no more than the percentage allowed by the state of the host meet.

(d) The franchise holder shall withhold and pay to the city or town in which the race track is located two-thirds ($\frac{2}{3}$) of the odd cents or breaks on all moneys wagered on live, on-premises races and on simulcast races, or if the track is not located within the corporate limits of a city or town, then the two-thirds ($\frac{2}{3}$) of the odd cents or breaks on all money wagered on live, on-premises races and on simulcast races shall be paid to the county in which the track is located.

(e)(1) Excepting only the moneys retained for the use and benefit of the franchise holder, the amounts paid to the commission for the use and benefit of the State of Arkansas, and the amount paid to the city, town, or county, as provided in subsection (d) of this section, all moneys

received by the franchise holder from wagers shall be paid over to patrons holding winning pari-mutuel tickets, as their respective interests may appear, upon presentation of the tickets.

(2)(A) However, all winning pari-mutuel tickets not presented to the franchise holder for redemption on or before the one hundred eightieth day next following the last racing day of each racing meet hereafter held shall be void.

(B) Of the moneys represented by the void pari-mutuel tickets, the franchise holder shall immediately distribute the proceeds as follows:

(i) One-half ($\frac{1}{2}$) of the amount thereof shall be paid to the treasurer of the county in which the racing track is located for credit to the general fund of the county; and

(ii) One-half ($\frac{1}{2}$) of the amount thereof shall be paid to the treasurer of the city in which the racing track is located and shall be credited to the general fund of the city.

(C) The money shall be used for charitable purposes only, benefiting young females and young males of the city as determined by the mayor and the governing body of the city. It is the intent that the funds shall be made available to and used by the Boys and Girls Clubs or similar nonprofit charitable organizations providing recreational youth services benefiting young females and young males of the city.

(f) Breaks or breakage shall be computed as the amount of odd cents remaining in each pari-mutuel pool after redistributions are made in a sum equal to the next lowest multiple of ten cents (10¢). Provided, in the event of a minus pool, the commission shall have the authority to establish the minimum payout on winning wagers.

(g) All moneys due the State of Arkansas by the permit holder under subsection (c) of this section shall be paid to the commission daily, and all amounts due the city, town, or county under subsection (d) of this section shall be paid over to the treasurer of the city, town, or county immediately following the close of the racing meet.

(h) The rate of tax on any additional methods of wagering shall be established by law.

History. Acts 1957, No. 191, § 19; 1965, No. 142, § 2; 1971, No. 382, §§ 1-3; 1973, No. 780, § 2; 1973, No. 879, § 1; 1983, No. 424, § 1; A.S.A. 1947, §§ 84-2834, 84-2834.1; Acts 1987, No. 383, § 4; 1991, No. 850, § 1; 1993, No. 1163, § 1; 1995, No. 342, § 2; 1995, No. 347, § 2; 1999, No. 473, § 2; 1999, No. 1509, §§ 1-3; 1999, No. 1585, § 2; 2001, No. 1837, §§ 1, 2; 2019, No. 910, § 3516.

Amendments. The 2019 amendment substituted "Secretary of the Department of Finance and Administration" for "Director of the Department of Finance and Administration" in the third sentence of (c)(2)(C)(i).

23-111-512. Commission's access to meets, books, records, etc.

(a) The Arkansas Racing Commission shall at all times have access to any portion of the space or enclosure where a race meeting is held, including the space or enclosure where the pari-mutuel or certificate system of wagering is conducted or supervised at any racing meet, for

the purpose of ascertaining whether or not the franchise holder is retaining only the commission provided in this chapter.

(b) The commission shall have full and free access to the books, records, machines, and papers pertaining to the pari-mutuel or certificate method of wagering, and admission tickets.

(c) The commission may also at any time investigate and ascertain whether or not any of the provisions of this chapter or the rules of the commission are being violated at the race track or enclosure.

History. Acts 1957, No. 191, § 23; A.S.A. 1947, § 84-2838; Acts 2019, No. 315, § 2823.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (c).

23-111-515. Additional racing days for the benefit of small municipalities and community colleges.

(a)(1) The Arkansas Racing Commission is authorized to allow each dog racing franchise holder to conduct six (6) additional days of racing during each twelve-month period.

(2) The additional days of racing may be divided between each of the two (2) racing meets allowed by this section, or all the additional days of racing may be added to a single racing meet as determined by the commission.

(3) In the event the additional days allowed by the commission fall upon a Saturday or Saturdays, then the franchise holder, at its option, may conduct daylight racing as authorized for a regular racing meet.

(b)(1) The franchise holder shall distribute the net proceeds, as defined in subdivision (b)(2) of this section, from the additional days of dog racing as follows:

(A) Twenty-five percent (25%) thereof shall be remitted at the end of each racing meet at which such additional days of racing are conducted to the various municipalities in the county where the dog racing meet is held which have a population of fewer than five thousand (5,000) inhabitants according to the most recent federal census, with each such municipality to receive an equal share of the funds; and

(B) Seventy-five percent (75%) of the proceeds shall be deposited with the Treasurer of State as special revenues and credited to an institution of higher education fund in the county in which the dog racing track is located. Such funds shall be considered local taxes for the purposes of § 6-61-601.

(2) Net proceeds derived from the additional days of dog racing shall be all revenue derived from the pari-mutuel wagering at the dog racing track during the additional days of racing, less the amount of the purses paid by the franchise holder.

(c) The commission shall establish appropriate rules to assure compliance with the provisions of this section and shall audit and verify all receipts and expenditures of the franchise holder in determining compliance with this section.

History. Acts 1993, No. 879, §§ 1, 2, 4, deleted “and regulations” following “rules”
5; 2019, No. 315, § 2824. in (c).

Amendments. The 2019 amendment

23-111-517. Disposition of pari-mutuel tax revenue.

(a) Each year, the first eighty-five thousand dollars (\$85,000) of the pari-mutuel tax revenue derived from § 23-111-505(a) shall be remitted directly to Arkansas State University Mid-South and shall be used by the college for facilities, programming, and personnel in the support of a nursing program.

(b) The revenue received by the college under this section shall be considered local taxes for the purposes of § 6-61-601.

History. Acts 2001, No. 1488, § 1; substituted “Arkansas State University
2016, No. 140, § 14. Mid-South” for “Mid-South Community

Amendments. The 2016 amendment College” in (a).

23-111-518. Legislative intent — Definitions — Payable winnings agreements.

(a) It is the intent of the General Assembly to recognize the rich history of greyhound racing in the state and to provide clarity in the law regarding payable winnings agreements to ensure that the purpose of The Arkansas Casino Gaming Amendment of 2018, Arkansas Constitution, Amendment 100, is met while maintaining the traditions related to greyhound racing.

(b) As used in this section:

(1) “Owner” means the person whose name the greyhound is registered under with the National Greyhound Association;

(2)(A) “Payable winnings” means moneys payable to a payee entitled to collect the moneys due to the owner’s greyhound’s winning a greyhound race.

(B) “Payable winnings” does not include net casino gaming receipts as defined in The Arkansas Casino Gaming Amendment of 2018, Arkansas Constitution, Amendment 100;

(3) “Payee” means the person to whom the payable winnings are due; and

(4) “Payor” means an individual, corporation, partnership, association, trust, or other entity holding a franchise to conduct greyhound racing under this chapter.

(c) At the payee’s direction, a payee may enter into a written payable winnings agreement that authorizes:

(1) A percentage or agreed-upon amount of the payable winnings to be deducted from the payable winnings by the payor at the payee’s request; and

(2) The payment of moneys from the payable winnings to be paid to a nonprofit organization described in 26 U.S.C. § 501(c), as in effect on January 1, 2019, as designated by the payee.

(d) Payable winnings included in a payable winnings agreement shall be paid first to the nonprofit organization listed in the payable winnings agreement, with the remainder paid to the payee.

History. Acts 2019, No. 892, § 1.

CHAPTER 112
ARKANSAS MOTOR VEHICLE COMMISSION ACT

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. ARKANSAS MOTOR VEHICLE COMMISSION.
- 3. LICENSING AND REGULATION.
- 4. UNLAWFUL PRACTICES.
- 6. USED MOTOR VEHICLE BUYERS PROTECTION.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 23-112-103. Definitions.
- 23-112-104. Injunction.
- 23-112-105. Civil damages.
- 23-112-106. Enforcement.

SECTION.

- 23-112-107. Motor vehicle event data recorder — Data ownership — Definitions.

23-112-103. Definitions.

As used in this chapter:

(1) “Advertisement” means an oral, written, telecommunicated, graphic, pictorial, or other statement made in the course of soliciting business, including without limitation, a statement or representation made in a newspaper, magazine, internet, or other publication or contained in a notice, sign, poster, display, circular, pamphlet, letter, or flyer, or made via radio, television, or any other medium;

(2) “All-terrain vehicle” means a motor vehicle that:

(A) Is an off-highway vehicle:

(i) Fifty inches (50”) or less in width, having a dry weight of nine hundred pounds (900 lbs.) or less, and traveling on three (3) or more low-pressure tires, with a seat designed to be straddled by the operator, a Class 1 all-terrain vehicle; or

(ii) With a width that exceeds forty-five inches (45”) or having a dry weight that exceeds six hundred pounds (600 lbs.), traveling on four (4) or more low-profile, low-pressure tires, and having a bench seat or one (1) or more bucket seats, a Class 2 all-terrain vehicle;

(B) Has a seat for the operator and any passenger and handlebars or other steering mechanism for control; and

(C) Is used for any purpose, including, but not limited to, off-road, amphibious, or recreational travel;

(3) “Auto auction” means:

(A) Any person who operates or provides a place of business or facilities for the wholesale exchange of motor vehicles by and between duly licensed motor vehicle dealers;

(B) Any motor vehicle dealer licensed to sell used motor vehicles, selling motor vehicles using an auction format but not on consignment; and

(C) Any person who provides the facilities for or is in the business of selling motor vehicles in an auction format;

(4) "Branch location" means a secondary location:

(A) Identified in a license issued by the Arkansas Motor Vehicle Commission to a motor vehicle dealer; and

(B) Which is an established place of business other than the licensed location;

(5) "Broker" means a person who for any valuable consideration, whether received directly or indirectly, arranges or offers to arrange a transaction involving the sale, for purposes other than resale, of a new motor vehicle, and who is not:

(A) A dealer or bona fide employee of a new motor vehicle dealer when acting on behalf of a new motor vehicle dealer;

(B) A representative or bona fide employee of a manufacturer, factory branch, or factory representative when acting on behalf of a manufacturer, factory branch, or factory representative;

(C) A representative or bona fide employee of a distributor or distributor branch when acting on behalf of a distributor or distributor branch; or

(D) At any point in the transaction, the bona fide owner of the vehicle involved in the transaction;

(6)(A) "Coerce" means compelling or attempting to compel by threatening, retaliating, using economic force, or by not performing or complying with:

(i) Any terms or provisions of the franchise or sales and service agreement;

(ii) The terms of this chapter; or

(iii) The rules promulgated by the Arkansas Motor Vehicle Commission.

(B) "Coerce" does not mean recommending, exposing, persuading, urging, or arguing;

(7) "Commission" means the Arkansas Motor Vehicle Commission created by this chapter;

(8) "Conversion" means a motor vehicle other than an exempted specialty vehicle that is substantially modified by a person, firm, or corporation other than the manufacturer or distributor of the chassis of the motor vehicle and that has not been the subject of a retail sale;

(9) "Distributor" means any person, resident or nonresident, who, in whole or in part, sells or distributes new motor vehicles to motor vehicle dealers or who maintains distributor representatives;

(10) "Distributor branch" means a branch or division office similarly maintained by a distributor for the same purposes a factory branch or division is maintained;

(11) "Distributor representative" means a representative similarly employed by a distributor or distributor branch;

(12) "Factory branch" means a branch or division office maintained by a person, firm, association, corporation, or trust who manufactures or assembles new motor vehicles for sale to distributors, to motor vehicle dealers, or for directing or supervising, in whole or in part, its representatives;

(13) "Factory representative" means a representative employed by a:

(A) Person, firm, association, corporation, or trust that manufactures or assembles new motor vehicles; or

(B) Factory branch, for the purpose of making or promoting the sale of its new motor vehicles or for supervising or contacting its dealers or prospective dealers;

(14) "Franchise" means one (1) or more contracts between a franchised dealer as franchisee and either a manufacturer or a distributor, importer, second-stage manufacturer, or converter as franchiser under which:

(A) The franchisee is granted the right to sell, service, or sell and service new motor vehicles manufactured or distributed by the franchiser;

(B) The franchisee as an independent business is a component of the franchiser's distribution system;

(C) The franchise is substantially associated with the franchiser's trademark, trade name, or commercial symbol;

(D) The franchisee's business is substantially reliant on the franchiser for a continued supply of motor vehicles, parts, or accessories for the conduct of its business; or

(E)(i) Any right, duty, or obligation granted or imposed by this chapter is affected.

(ii) "Franchise" includes a written communication from a franchiser to a franchisee by which a duty is imposed upon the franchisee;

(15) "Good faith" means the duty of each party to any franchise and all officers, employees, or agents thereof to act in a fair and equitable manner toward each other so as to guarantee the one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party;

(16) "Licensed location" means the address designated as the primary business address of the motor vehicle dealer on the application submitted for approval of licensure;

(17) "Line make of a motor vehicle" means a group or series of motor vehicles that have the same brand identification or brand name, based upon the manufacturer's trademark, trade name, or logo;

(18) "Low speed vehicle" means a motor vehicle:

(A) That is four-wheeled;

(B) That has an attainable speed in one (1) mile of more than twenty miles per hour (20 m.p.h.) but not more than twenty-five miles per hour (25 m.p.h.) on a paved level surface; and

(C) With a gross vehicle weight of less than three thousand pounds (3,000 lbs.);

(19) “Manufacturer” means any person, firm, association, corporation, or trust, resident or nonresident, that manufactures or assembles new motor vehicles;

(20) “Motor vehicle” means a self-propelled vehicle having two (2) or more wheels that has as its primary purpose the transportation of a person, including without limitation all-terrain vehicles, automobiles, trucks, motorcycles, motor-driven cycles, motor scooters, and low speed vehicles;

(21)(A)(i) “Motor vehicle dealer” means a person that is:

(a) Engaged in the business of selling, offering to sell, soliciting, or advertising the sale of servicing or repairing motor vehicles under a manufacturer’s warranty; and

(b) Located at an established and permanent place of business under a franchise, sales and service agreement, or a bona fide contract in effect with a manufacturer or distributor.

(ii) “Motor vehicle dealer” includes any person engaged in the business of selling, offering to sell, soliciting, or advertising the sale, regardless of the medium used, of commercial buses, school buses, or other multipassenger motor vehicles, or possessing them for the purpose of resale.

(B) “Motor vehicle dealer” does not include:

(i) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under judgment, decree, or order of any court;

(ii) Public officers while performing their duties as officers;

(iii) Employees of persons, corporations, or associations enumerated in subdivision (21)(B)(i) of this section when engaged in the specific performance of their duties as employees;

(iv) Specialty vehicle dealers;

(v) Financial institutions engaged in the leasing of motor vehicles; or

(vi) Used motor vehicle dealers licensed by the state under § 23-112-601 et seq.;

(22) “Motor vehicle lessor” means any person not excluded by subdivision (21) of this section engaged in the motor vehicle leasing or rental business;

(23) “Motor vehicle salesperson” means any person who:

(A) Is employed as a salesperson by a motor vehicle dealer whose duties include the selling or offering for sale of motor vehicles;

(B) For compensation of any kind, acts as a salesperson, agent, or representative of a motor vehicle dealer;

(C) Attempts to or in fact negotiates a sale of a motor vehicle owned partially or entirely by a motor vehicle dealer;

(D) Uses the financial resources, line of credit, or floor plan of a motor vehicle dealer to purchase, sell, or exchange any interest in a motor vehicle; and

(E) Is employed by a motor vehicle dealer as a salesperson for whom a motor vehicle dealer requires to have licensure for simulta-

neous employment as a finance manager, insurance manager, service manager, parts manager, or other specified office personnel concerned with the sale of a motor vehicle under this chapter;

(24) "New motor vehicle" means any motor vehicle, the legal title to which has never been transferred by a manufacturer, distributor, or franchised new motor vehicle dealer to an ultimate purchaser;

(25) "Off premises" means a location other than the address designated as the licensed location;

(26) "Person" means and includes, individually and collectively, individuals, firms, partnerships, copartnerships, associations, corporations, trusts, or any other form of business enterprise, or any legal entity;

(27)(A) "Relevant market area" means the area within a radius surrounding an existing dealer or the area of responsibility defined in the franchise and on file in the commission office, whichever is greater.

(B)(i) For all licensed new motor vehicle dealers, excluding motorcycles, motorized cycles, and motor-driven all-terrain vehicles, which include two-wheeled, three-wheeled, four-wheeled, six-wheeled, or eight-wheeled motorcycles, motorized cycles, and motor-driven all-terrain vehicles, the relevant market area shall be a radius of twenty (20) miles.

(ii) However, when a manufacturer is seeking to establish an additional new motor vehicle dealer, the relevant market area shall in all instances be the area within a radius of ten (10) miles around an existing dealer.

(C) For all licensed new motor vehicle dealers of motorcycles, motorized cycles, and motor-driven all-terrain vehicles, which include two-wheeled, three-wheeled, four-wheeled, six-wheeled, or eight-wheeled motorcycles, motorized cycles, and motor-driven all-terrain vehicles, the relevant market area shall in all instances be the area within a radius of thirty (30) miles around an existing dealer or the area of responsibility defined in the franchise and on file in the commission office, whichever is greater;

(28) "Retail sale" or "sale at retail" means the act or attempted act of selling, bartering, exchanging, or otherwise disposing of a new motor vehicle to an ultimate purchaser for use as a consumer;

(29) "Second-stage manufacturer" or "converter" means a person, firm, or corporation that, prior to retail sale of a motor vehicle:

(A) Assembles, installs, or affixes a body, cab, or special equipment to a chassis; or

(B) Substantially adds to, subtracts from, or modifies a previously assembled or manufactured motor vehicle;

(30)(A) "Specialty vehicle" means a motor vehicle manufactured by a second-stage manufacturer by purchasing motor vehicle components, for example, frame and drive train, and completing the manufacture of finished motor vehicles for the purpose of resale, with the primary manufacturer warranty unimpaired, to a limited commercial market rather than the consuming public.

(B) "Specialty vehicle" includes garbage trucks, ambulances, fire trucks, limousines, hearses, and other similar limited-purpose vehicles as the commission may by rule provide;

(31) "Temporary permit" means a license issued for one (1) week or less to a motor vehicle dealer who is licensed in another state for the purpose of displaying, offering to sell, selling, and soliciting the sales of motor vehicles at the time and place designated by the commission and only at an approved motor vehicle show in this state;

(32)(A) "Ultimate purchaser" means, with respect to any new motor vehicle, the first person, other than a motor vehicle dealer purchasing in his or her capacity as a dealer, who in good faith purchases the new motor vehicle for purposes other than resale.

(B) "Ultimate purchaser" shall not include a person who purchases a vehicle for purposes of altering or remanufacturing the motor vehicle for future resale;

(33)(A) "Used motor vehicle" means a motor vehicle:

(i) For which title has been sold, bargained, exchanged, given away, or transferred from the person or corporation who first took ownership from the manufacturer, distributor, dealer, or agents thereof; or

(ii) So used as to have become what is commonly known as a "second hand motor vehicle" or a "previously owned motor vehicle".

(B) A new motor vehicle shall not be considered a used motor vehicle unless the motor vehicle has been:

(i) Placed in actual operation; and

(ii) Not held for resale by an owner that has:

(a) Been granted a certificate of title; and

(b) Registered the motor vehicle under the Uniform Motor Vehicle Administration, Certificate of Title, and Antitheft Act, § 27-14-101 et seq.;

(34) "Used motor vehicle dealer" means any person, wholesaler, or auto auctioneer who, for a commission or with the intent to make a profit or gain of money or other thing of value:

(A) Sells, exchanges, rents, or leases with the option to purchase or own, or attempts to negotiate a sale or exchange of an interest in any used motor vehicle; or

(B) Is wholly or in part in the business of buying, selling, trading, or exchanging used motor vehicles, whether or not the used motor vehicles are owned by the person;

(35)(A) "Wholesaler" means any person, resident or nonresident, not excluded by subdivision (21) of this section, who, in whole or in part, sells used motor vehicles to motor vehicle dealers or purchases used vehicles for the purpose of resale.

(B) However, motor vehicle dealers who, incidental to their primary business, sell motor vehicles to other dealers are not considered wholesalers because of the incidental sales; and

(36) "Stop-sale order" or "do-not-drive order" means a notification issued by a manufacturer to the manufacturer's franchised new motor

vehicle dealers stating that certain used motor vehicles in inventory shall not be sold or leased, at either retail or wholesale prices, due to a:

- (A) Federal safety recall for a defect or noncompliance; or
- (B) Federal emissions recall.

History. Acts 1975, No. 388, § 3; 1985, No. 1032, § 1; 1985, No. 1058, § 1; A.S.A. 1947, § 75-2303; Acts 1987, No. 620, § 1; 1987, No. 645, §§ 1, 2; 1989, No. 65, §§ 1-3; 1989, No. 509, § 1; 1991, No. 411, § 3; 1991, No. 890, §§ 1-3; 1993, No. 383, § 5; 1997, No. 1154, §§ 3-7; 1999, No. 1042, § 1; 2001, No. 1053, § 1; 2003, No. 1098, §§ 1, 2; 2009, No. 756, §§ 1-5; 2011, No. 1005, §§ 1-3; 2013, No. 561, §§ 1, 2; 2013, No. 1043, §§ 1, 2; 2015, No. 1055, §§ 1, 2; 2015, No. 1164, § 7; 2019, No. 315, § 2825; 2019, No. 924, § 1.

Amendments. The 2015 amendment by No. 1055 substituted “nine hundred pounds (900 lbs.)” for “eight hundred

pounds (800 lbs.)” in (2)(A)(i); in (2)(A)(ii), substituted “forty-five inches (45”)” for “fifty inches (50”)” and “six hundred pounds (600 lbs.)” for “eight hundred pounds (800 lbs.)” and inserted “or one (1) or more bucket seats”; and added (23)(E).

The 2015 amendment by No. 1164, in (18)(B), substituted “That has an attainable speed” for “Whose speed attainable,” substituted “of more than” for “is more than,” and substituted “but not more” for “and not more.”

The 2019 amendment by No. 315 substituted “rule” for “regulation” in (30)(B).

The 2019 amendment by No. 924 added (36).

23-112-104. Injunction.

(a) The Arkansas Motor Vehicle Commission shall be entitled to seek an injunction upon affidavit in the circuit court for the county in which the commission’s office is located to prevent any person, firm, partnership, association, corporation, or legal entity from violating any provision of this chapter or any rule promulgated by the commission.

(b) The commission shall not be required to execute or give bond for costs, indemnity, or stay or to give security as a condition to the issuance of a restraining order or injunction, either temporary or permanent.

History. Acts 1977, No. 838, § 1; A.S.A. 1947, § 75-2312; Acts 1997, No. 1154, § 8; 2019, No. 315, § 2826.

Amendments. The 2019 amendment deleted “or regulation” following “rule” in (a).

23-112-105. Civil damages.

(a) A licensee suffering pecuniary loss because of any willful failure by any other licensee to comply with this chapter, other than a new automobile or truck dealer’s failure to comply with § 23-112-301(d)(1) and (2) or with any rule promulgated by the Arkansas Motor Vehicle Commission under authority vested in it by this chapter, may recover reasonable damages and attorney’s fees therefor in any court of competent jurisdiction.

(b) If a motor vehicle dealer prevails in an action against a manufacturer, distributor, second-stage manufacturer, importer, converter, manufacturer branch or division, or distributor branch or division under any provision of this chapter, the motor vehicle dealer shall also have a cause of action against the manufacturer, distributor, second-stage manufacturer, importer, converter, manufacturer branch or divi-

sion, or distributor branch or division for attorney's fees, if none have been awarded in an earlier administrative hearing.

History. Acts 1975, No. 388, § 9; A.S.A. 1947, § 75-2309; Acts 1989, No. 678, § 3; 2011, No. 1005, § 4; 2013, No. 1043, § 3; 2019, No. 315, § 2827.

Amendments. The 2019 amendment deleted "or regulation" following "rule" in (a).

23-112-106. Enforcement.

(a) The Arkansas Motor Vehicle Commission may enter orders that direct and command compliance with this chapter and rules under this chapter if any of the following conditions have been met:

(1) The commission has conducted a hearing within sixty (60) days on the matter;

(2) The commission has made written findings that the public interest and welfare require the person or entity against whom the commission is acting to take the specified action; or

(3) The commission finds that the current civil or administrative penalties are insufficient.

(b) The commission may enforce its findings and conclusions upon entry of an order under subsection (a) of this section.

History. Acts 2003 (2nd Ex. Sess.), No. 62, § 1; 2019, No. 315, § 2828.

substituted "rules" for "regulations" in the introductory language of (a).

Amendments. The 2019 amendment

23-112-107. Motor vehicle event data recorder — Data ownership — Definitions.

(a) As used in this section:

(1) "Authorized representative" means a person who is the attorney-in-fact for an owner or a person who has been appointed the administrator or personal representative of the estate of the owner;

(2) "Motor vehicle event data recorder" means a factory-installed feature in a motor vehicle that does one (1) or more of the following:

(A) Records, stores, transmits, or dispenses any of the following information for the purpose of retrieval after a crash:

(i) Vehicle speed;

(ii) Vehicle direction;

(iii) Vehicle location;

(iv) Steering performance; or

(v) Seat belt restraint status;

(B) Has the capacity to transmit information concerning a crash in which the motor vehicle has been involved to a central communications system when a crash occurs; or

(C) Includes a sensing and diagnostic module, restraint control module, electronic throttle control, or other similar component; and

(3) "Owner" means a person or entity:

(A) In whose name a motor vehicle is registered or titled;

(B) Who leases a motor vehicle for at least three (3) months;

(C) Who is entitled to possession of the motor vehicle as the purchaser under a security agreement; or

(D) Who is the authorized representative of the owner.

(b) At the time of a new vehicle purchase by a consumer from a dealership, an owner of a motor vehicle shall be given written notice by the seller or manufacturer that includes the following:

(1) The presence of the motor vehicle event data recorder in the motor vehicle;

(2) The type of motor vehicle event data recorder in the motor vehicle; and

(3) The type of data that is recorded, stored, or transmitted on the motor vehicle event data recorder.

(c) Except as specifically provided under subsection (d) of this section and subsections (f)-(i) of this section, the data on a motor vehicle event data recorder:

(1) Is private;

(2) Is exclusively owned by the owner of the motor vehicle; and

(3) Shall not be retrieved or used by another person or entity.

(d)(1) If a motor vehicle is owned by one (1) owner, then the owner of a motor vehicle may provide written consent in the form of a release signed by the owner that authorizes a person or entity to retrieve or use the data.

(2) If a motor vehicle is owned by more than one (1) person or entity and if all owners agree to release the data, then all owners must consent in writing by signing a release to authorize a person or entity to retrieve or use the data.

(3) A release to a person or entity under this subsection shall be limited to permission for data collection and compilation only and shall not authorize the release of information that identifies the owner of the vehicle.

(e)(1)(A) If a motor vehicle is equipped with a motor vehicle event data recorder and is involved in an accident in Arkansas, the owner of the motor vehicle at the time that the data is created shall own and retain exclusive ownership rights to the data.

(B) The ownership of the data shall not pass to a lienholder or to an insurer because the lienholder or insurer succeeds in ownership to the vehicle as a result of the accident.

(2) The data shall not be used by a lienholder or an insurer for any reason without a written consent in the form of a release signed by the owner of the motor vehicle at the time of the accident that authorizes the lienholder or insurer to retrieve or use the data.

(3) A lienholder or insurer shall not make the owner's consent to the retrieval or use of the data conditioned upon the payment or settlement of an obligation or claim. However, the insured is required to comply with all policy provisions, including any provision that requires the insured to cooperate with the insurer.

(4) An insurer or lessor of a motor vehicle shall not require an owner to provide written permission for the access or retrieval of information

from a motor vehicle event data recorder as a condition of the policy or lease.

(f) Except as specifically provided under subsection (d) of this section and subsections (g)-(i) of this section, the data from a motor vehicle event data recorder shall only be produced without the consent of the owner at the time of the accident if:

(1) A court of competent jurisdiction in Arkansas orders the production of the data;

(2) A law enforcement officer obtains the data based on probable cause of an offense under the laws of the State of Arkansas; or

(3) A law enforcement officer, a firefighter, or an emergency medical services provider obtains the data in the course of responding to or investigating an emergency involving physical injury or the risk of physical injury to any person.

(g) The Arkansas Department of Transportation may retrieve data from a motor vehicle event data recorder if the data is used for the following purposes:

(1) Preclearing weigh stations;

(2) Automating driver records of duty status as authorized by the department;

(3) Replacing handwritten reports for any fuel tax reporting or other mileage reporting purpose; or

(4) Complying with a state or federal law.

(h) To protect the public health, welfare, and safety, the following exceptions shall be allowed regarding the retrieval of data from a motor vehicle event data recorder:

(1) To determine the need or to facilitate emergency medical care for the driver or passenger of a motor vehicle that is involved in a motor vehicle crash or other emergency, including obtaining data from a company that provides subscription services to the owners of motor vehicles for in-vehicle safety and security communications systems;

(2) To facilitate medical research of the human body's reaction to motor vehicle crashes if:

(A) The identity of the owner or driver is not disclosed in connection with the retrieved data; and

(B) The last four (4) digits of the vehicle identification number are not disclosed; or

(3) To diagnose, service, or repair a motor vehicle.

(i) Notwithstanding any other provision of this section, the use of data from a motor vehicle event data recorder shall not be permitted into evidence in a civil or criminal matter pending before a court in the State of Arkansas unless it is shown to be relevant and reliable pursuant to the Arkansas Rules of Evidence.

(j)(1) If a motor vehicle is equipped with a motor vehicle event data recorder that is capable of recording, storing, transmitting, or dispensing information as described in this section and that capability is part of a subscription service, then the information that may be recorded, stored, transmitted, or dispensed shall be disclosed in the subscription agreement.

(2) Subsections (c) and (d) of this section and subsections (f)-(h) of this section shall not apply to subscription services that meet the requirements of this subsection.

(k)(1) A new motor vehicle dealer, manufacturer, and distributor shall be immune and held harmless against liability for the privacy of information contained in motor vehicle databases, including without limitation recording devices, global-positioning systems, navigation devices, or any in-vehicle data not controlled by the dealer.

(2) This subsection does not affect the notice requirements under subsection (b) of this section.

(l) The Arkansas Motor Vehicle Commission shall administer this section and may promulgate rules for the administration of this section.

History. Acts 2005, No. 1419, § 1; substituted “Department of Transportation” for “State Highway and Transportation Department” in (g).
2009, No. 148, § 1; 2011, No. 1005, §§ 5, 6; 2017, No. 707, § 266.

Amendments. The 2017 amendment

SUBCHAPTER 2 — ARKANSAS MOTOR VEHICLE COMMISSION

SECTION.
23-112-202. Proceedings — Bond.
23-112-203. Director of the Arkansas Motor Vehicle Commission.

SECTION.
23-112-204. Rules.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

23-112-202. Proceedings — Bond.

(a) The Arkansas Motor Vehicle Commission shall meet at Little Rock and complete its organization immediately after the entire membership thereof has been appointed and has qualified.

(b) Before entering upon the discharge of the duties of his or her office, the Chair of the Arkansas Motor Vehicle Commission and each member of the commission shall take and subscribe to the oath of office prescribed by the Arkansas Constitution and shall file this oath in the office of the Secretary of State.

(c)(1) The commission shall purchase either a blanket position honesty or faithful performance bond from some surety company authorized to do business in this state. This bond shall be in the penal sum of ten thousand dollars (\$10,000), made payable to the State of Arkansas, conditioned for the honest and faithful performance of the duties of the chair and each member of the commission and the Director of the Arkansas Motor Vehicle Commission, the bond to be approved by the Governor and filed in the office of the Secretary of State.

(2) The commission shall keep the bond in force at all times from and after the date the commission is organized.

(d) A majority of the commission shall constitute a quorum for the transaction of any business.

(e) The commission shall adopt and use a common seal for the authentication of its records and orders.

(f) The commission shall hold all of its regular monthly meetings in its office at Little Rock, but upon approval of a majority of its members, may hold special meetings and the hearings provided for under §§ 23-112-501 — 23-112-509 at any time and place within the State of Arkansas.

History. Acts 1975, No. 388, § 4; A.S.A. 1947, § 75-2304; Acts 1993, No. 383, § 2; 1995, No. 568, § 2; 2019, No. 910, § 5525.

Amendments. The 2019 amendment substituted “and the Director of the Arkansas Motor Vehicle Commission” for “the Executive Director of the Arkansas Motor Vehicle Commission, and all other employees of the commission” in (c)(1).

23-112-203. Director of the Arkansas Motor Vehicle Commission.

(a)(1) The Arkansas Motor Vehicle Commission in consultation with the Secretary of the Department of Labor and Licensing shall employ a qualified person to serve as Director of the Arkansas Motor Vehicle Commission, to serve at the pleasure of the commission, and shall fix his or her salary and shall define and prescribe the duties of the director.

(2) The director shall be in charge of the office of the Arkansas Motor Vehicle Commission and shall devote such time to the duties thereof as may be necessary.

(3) The duties of the director shall include, but shall not be limited to, the collection of all fees and charges under the provisions of this chapter, keeping a record of all proceedings of the commission, and keeping an accurate account of all moneys received and disbursed by the commission, all of which records shall be considered as public records.

(b) The commission may employ in consultation with the secretary such clerical and professional help and incur such expenses as may be reasonably necessary for the proper discharge of its duties under this chapter.

(c) Except as provided in this chapter, the commission shall maintain its office and transact its business at Little Rock.

History. Acts 1975, No. 388, § 4; A.S.A. 1947, § 75-2304; Acts 1995, No. 568, § 3; 2019, No. 910, § 5526.

Amendments. The 2019 amendment

rewrote the section heading; rewrote (a)(1) and (a)(2); inserted “of the director” in (a)(3); and inserted “in consultation with the secretary” in (b).

23-112-204. Rules.

The Arkansas Motor Vehicle Commission shall have power to prescribe, issue, amend, and rescind, pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., such reasonable rules as may be reasonably necessary or appropriate to carry out the provisions of this chapter.

History. Acts 1975, No. 388, § 4; 1985, No. 1032, § 2; 1985, No. 1058, § 2; A.S.A. 1947, § 75-2304; Acts 2019, No. 315, § 2829.

Amendments. The 2019 amendment deleted “and regulations” following “rules” in the section heading and in the text.

SUBCHAPTER 3 — LICENSING AND REGULATION

SECTION.

- 23-112-308. Denial, revocation, and suspension.
- 23-112-309. Monetary penalty in lieu of suspension or revocation of license.
- 23-112-310. Delivery, preparation, and warranty obligations.
- 23-112-313. Warranty agreements — Definition.

SECTION.

- 23-112-314. Civil penalty — Definition.
- 23-112-316. Delivery prior to sale — Disclosures — Definitions.
- 23-112-317. Motor vehicle dealer service and handling fees.
- 23-112-319. Reimbursement claim by motor vehicle dealer.

23-112-308. Denial, revocation, and suspension.

(a) Notwithstanding any other statute, the Arkansas Motor Vehicle Commission may deny an application for a license or revoke or suspend a license after it has been granted for any of the following reasons:

- (1)(A) For selling or soliciting sales of a motor vehicle without a license issued by the commission.
- (B) The unlawful sale or solicitation of each motor vehicle shall constitute a separate offense;
- (2) On satisfactory proof of the unfitness of the applicant or the licensee, as the case may be, under the standards established and set out in this chapter;
- (3) For fraud practiced or any material misstatement made by an applicant in any application for license under the provisions of this chapter;
- (4) For failure to comply with any provision of this chapter or with any rule promulgated by the commission under authority vested in it by this chapter;
- (5) Change of condition after license is granted or failure to maintain the qualifications for license;
- (6) Continued violation of any of the provisions of this chapter or of any of the rules of the commission;

(7) For any violation of any law relating to the sale, distribution, or financing of motor vehicles;

(8) Defrauding any retail buyer to the buyer's damage;

(9) Failure to perform any written agreement with any retail buyer;

(10) Selling, attempting to sell, or advertising for sale vehicles from a location other than that set forth on the license;

(11) Falsifying, altering, or neglecting to endorse or deliver a certificate of title to a transferee or lawful owner or failing to properly designate a transferee on a document of assignment or certificate of title;

(12) Knowingly purchasing, selling, or otherwise acquiring or disposing of a stolen motor vehicle;

(13) Submitting a false affidavit setting forth that a title has been lost or destroyed;

(14) Passing title or reassigning title as a dealer without a dealer's license or when the dealer's license has been suspended or revoked;

(15) For a person representing that he or she is a dealer or salesperson, either verbally or in any advertisement, when the person is not licensed as such;

(16) Assisting any person in the sale of a motor vehicle who is not licensed as a dealer by the commission;

(17) Being a manufacturer who fails to specify the delivery and preparation obligations of its motor vehicle dealers, as is required for the protection of the buying public, prior to delivery of new motor vehicles to retail buyers;

(18)(A) On satisfactory proof that any manufacturer, distributor, distributor branch or division, or factory branch or division has unfairly and without due regard to the equities of the parties or to the detriment of the public welfare failed to properly fulfill any warranty agreement or to adequately and fairly compensate any of its motor vehicle dealers for labor, parts, or incidental expenses incurred by the dealer with regard to factory warranty agreements performed by the dealer.

(B) Compensation for parts for two-wheeled, three-wheeled, and four-wheeled motorcycles and motor-driven all-terrain vehicles must be at the manufacturer's suggested retail price;

(19) For the commission of any act prohibited by §§ 23-112-301 — 23-112-307, 23-112-402, and 23-112-403, or the failure to perform any of the requirements of those sections;

(20) Using or permitting the use of special license plates assigned to him or her for any other purpose than those permitted by law;

(21) Disconnecting, turning back, or resetting the odometer of any motor vehicle in violation of state or federal law;

(22) Accepting an open assignment of title or bill of sale for a motor vehicle which is not completed by identifying the licensee as the purchaser or assignee of the motor vehicle;

(23)(A) Failure to notify the commission of a change in ownership, location, or franchise, or any other matters the commission may require by regulation.

(B) The notification shall be in written form and submitted to the commission at least fifteen (15) days prior to the effective date of the change;

(24) Failure to endorse and deliver an assignment and warranty of title to the buyer pursuant to § 27-14-902;

(25) Using or permitting the use of a temporary cardboard buyer's tag assigned to the dealer for any purpose other than permitted under § 27-14-1705; and

(26) Failure of a dealer to submit or deliver a certificate of title or manufacturer's certificate of origin within a reasonable period of time.

(b) The revocation or suspension of the license of a manufacturer, factory branch or division, distributor, or distributor branch or division may be limited to:

(1) One (1) or more municipalities or counties;

(2)(A) The sales area of any dealer whose franchise is unfairly cancelled or terminated within the purview of this chapter or whose franchise is not renewed in violation of the provisions of this chapter.

(B) However, when a franchise is unfairly cancelled or terminated within the purview of this chapter or is not renewed in violation of the provisions of this chapter in a metropolitan area serviced by several motor vehicle dealers handling the same motor vehicles, the revocation or suspension shall not be applicable to the remaining motor vehicle dealers in the metropolitan area.

History. Acts 1975, No. 388, § 6; 1985, No. 1032, § 5; 1985, No. 1058, § 5; A.S.A. 1947, § 75-2306; Acts 1991, No. 411, § 1; 1993, No. 383, § 4; 2001, No. 1053, § 9; 2009, No. 756, § 9; 2019, No. 315, §§ 2830, 2831.

Amendments. The 2019 amendment deleted "or regulation" following "rule" in (a)(4); and deleted "or regulations" following "rules" in (a)(6).

23-112-309. Monetary penalty in lieu of suspension or revocation of license.

(a)(1) If after alternative proceedings or notice and hearing the Arkansas Motor Vehicle Commission finds that any person holding a license under this chapter is guilty of any violation of this chapter or rules promulgated under this chapter, it shall have the power and authority to impose a monetary penalty upon the licensee in lieu of suspension or revocation of license.

(2) The commission shall have the power and authority to require the licensee to pay the monetary penalty with the sanction that the license may be suspended until the penalty is paid, which time shall not exceed ninety (90) days from entry of the commission's order or final order on appeal.

(3) The penalty in lieu of suspension or revocation may be imposed only if the commission formally finds that the public interest would not be impaired thereby and the payment of the penalty will achieve the desired disciplinary results.

(b)(1) If the commission finds that there is sufficient cause upon which to base the revocation of a license, the amount of the monetary penalty in lieu of revocation shall not exceed ten thousand dollars (\$10,000).

(2) If the commission finds that there is sufficient cause upon which to base the suspension of a license, the amount of the monetary penalty in lieu of suspension shall not be less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500) per day for each day the license would otherwise be suspended. However, the amount of the penalty shall not exceed the aggregate of five thousand dollars (\$5,000).

(c) No penalty shall be imposed if the license has been revoked by the commission for the violation.

(d) Each instance when this chapter or a regulation is violated shall constitute a separate violation.

(e) Unless the penalty assessed under this section is paid within fifteen (15) days following the date for an appeal from the order, the commission shall have the power to file suit in Pulaski County Circuit Court to obtain a judgment for the amount of penalty not paid.

History. Acts 1975, No. 388, § 6; 1985, No. 1032, § 5; 1985, No. 1058, § 5; A.S.A. 1947, § 75-2306; Acts 1999, No. 1042, § 4; 2001, No. 1053, § 10; 2019, No. 315, § 2832.

Amendments. The 2019 amendment substituted “rules” for “regulations” in (a)(1).

23-112-310. Delivery, preparation, and warranty obligations.

(a)(1) Every licensed motor vehicle manufacturer, distributor, second-stage manufacturer, importer, or converter shall file with the Arkansas Motor Vehicle Commission with its initial application for a license:

(A) A copy of the documents stating the delivery, preparation, and warranty obligations of its motor vehicle dealers; and

(B) A schedule of the compensation to be paid to its motor vehicle dealers for the work and services they shall be required to perform in connection with the delivery, preparation, and warranty obligations.

(2) The documents shall constitute the dealer’s only responsibility for product liability as between the dealer and the manufacturer or distributor.

(3) Any revisions to the delivery, preparation, and warranty obligations or to the schedule of compensation shall be filed no later than September 15 of each calendar year.

(b) Any mechanical, body, or parts defects arising from any express or implied warranties of any manufacturer shall constitute the manufacturer’s product or warranty liability.

(c) Notwithstanding the terms of a franchise agreement or provision of law in conflict with this subsection, the dealer’s delivery, preparation, and warranty obligations as filed with the commission shall constitute the dealer’s sole responsibility for product liability as between the dealer and the manufacturer or distributor, and, except for a loss

caused by the dealer's negligence or intentional misconduct or a loss caused by the dealer's modification of a product without manufacturer authorization, the manufacturer or distributor shall reimburse the dealer for all losses incurred by the dealer, including legal fees, court costs, and damages, as a result of the dealer's having been named a party in a product liability action.

(d)(1)(A) A manufacturer, distributor, distributor branch or division, or factory or division branch shall not pay to any of its motor vehicle dealers a labor rate per hour or parts price for warranty work that is less than that charged by the dealer to its retail customers, provided the rate is reasonable compared to other same line-make dealers in the dealer's relevant market area or the dealer's competitive market area.

(B) Conversely, a dealer shall not charge to its manufacturer, distributor, distributor branch or division, or factory branch or division a labor rate per hour or parts price in excess of the rate charged to its retail customers.

(C) A manufacturer, distributor, distributor branch or division, or factory branch or division of new motorcycles, motorized cycles, and all-terrain vehicles shall not pay to any new motor vehicle dealers of motorcycles, motorized cycles, and all-terrain vehicles a labor rate per hour or parts price for warranty work that is less than that charged by the new motor vehicle dealer to its retail customers, provided that the rate is reasonable compared to other same line make motor vehicle dealers in the new motor vehicle dealer's relevant market area or the new motor vehicle dealer's competitive market area.

(2)(A) All claims made by motor vehicle dealers for the labor, parts, or incidental expenses shall be paid within thirty (30) days following their approval.

(B) All claims shall be either approved or disapproved within thirty (30) days after their receipt, and when any claim is disapproved, the motor vehicle dealer who submits it shall be notified in writing of its disapproval within the period, and each notice shall state the specific grounds upon which the disapproval is based.

(3) A manufacturer, distributor, distributor branch or division, or factory or division branch shall pay a motor vehicle dealer for warranty work, as long as the work in question was properly performed in accordance with requirements of the manufacturer, distributor, distributor branch or division, or factory or division branch.

History. Acts 1975, No. 388, §§ 5, 6; 1985, No. 1032, §§ 3, 5; 1985, No. 1058, §§ 3, 5; A.S.A. 1947, §§ 75-2305, 75-2306; Acts 1991, No. 411, § 2; 1997, No. 1154, § 11; 1999, No. 1042, § 5; 2001, No. 1053, § 11; 2009, No. 756, § 10; 2011, No. 1005, § 7; 2013, No. 1043, § 4; 2015, No. 1055, § 3; 2019, No. 924, § 2.

Amendments. The 2015 amendment added the (d)(3)(A) designation; in (d)(3)(A), substituted "dealer" for "dealers" and added "in accordance with safety and repair specifications, bulletins, and requirements of the manufacturer, distributor, distributor branch or division, or factory or division branch"; and added

(d)(3)(B) through (D).

The 2019 amendment deleted the (d)(3)(A) designation; in (d)(3), substituted "A manufacturer" for "In no event shall a manufacturer", substituted "shall pay" for

"refuse to pay", and deleted "safety and repair specifications, bulletins, and" preceding "requirements"; and deleted (d)(3)(B) through (d)(3)(D).

23-112-313. Warranty agreements — Definition.

(a) Every manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division shall properly fulfill any warranty or recall agreement and adequately and fairly compensate each of its motor vehicle dealers for labor and parts.

(b) The compensation shall not fail to include reasonable compensation for diagnostic work, repair service, labor, and parts.

(c)(1) Time allowances for the diagnosis and performance of warranty or recall work and service shall be reasonable and adequate for the work to be performed.

(2) In the determination of what constitutes reasonable compensation for warranty or recall work and service under this subsection, the principal factor to be considered is the prevailing wage rates, exclusive of routine maintenance, that are being charged by the dealers in the relevant market area in which the motor vehicle dealer is doing business.

(3) The compensation of a motor vehicle dealer for warranty or recall service shall not be less than the rates charged by the motor vehicle dealer for like service to retail customers for nonwarranty service and repairs, provided the rate is comparable to the rate of other same line make dealers in an economically similar area or the dealer's competitive market area.

(d)(1)(A) The pricing for a recalled part shall not be reduced to an amount that is less than the original dealer cost or price for the same part unless the manufacturer obtains a discounted rate for the recalled part from a supplier.

(B) A recalled part is considered the same part if it is substantially the same part regardless of the part number.

(2) A part-by-part analysis is not required to determine the retail rate for parts.

(3) The parts mark-up shall not be substituted for a handling allowance or similar pricing amount that results in the reduction of compensation for the dealer.

(e)(1) All claims under this section, either original or resubmitted, made by motor vehicle dealers for the labor and parts shall be either approved or disapproved within thirty (30) days following their approval or disapproval.

(2)(A)(i) The motor vehicle dealer who submits a claim which is disapproved shall be notified in writing of the disapproval within the same period, and the notice shall state the specific grounds upon which the disapproval is based.

(ii) The motor vehicle dealer may correct and resubmit the disapproved claims within thirty (30) days of receipt of disapproval.

(B) Any claims not specifically disapproved in writing within thirty (30) days from their submission shall be deemed approved, and payment shall follow within thirty (30) days.

(3)(A) A claim shall not be disapproved because a clerical error was made that does not render the amount of the claim incorrect, including without limitation clerical errors that occur as a result of a manufacturer or distributor's prior approval process.

(B) However, a dealer may contest the disapproval through the manufacturer's appeals process.

(4)(A) The manufacturer or franchiser may:

(i) Require documentation for claims;

(ii) Audit the claims within a one-year period from the date the claim was paid or credit issued by the manufacturer or franchiser; and

(iii) Charge back any false or unsubstantiated claims.

(B) The audit and charge-back provisions of this subsection also apply to all other incentive and reimbursement programs for a period of twelve (12) months after the date of the transactions that are subject to audit by the franchiser.

(C) However, the manufacturer retains the right to charge back any fraudulent claim if the manufacturer establishes in a court of competent jurisdiction in this state that the claim is fraudulent within a period not to exceed two (2) years from the date of the claim in question.

(D)(i) A dealer may file an appeal with the Arkansas Motor Vehicle Commission to protest any chargeback under this subdivision (e)(4) within ninety (90) days of notification by the manufacturer or distributor.

(ii) If a dealer files an appeal of the chargeback with the commission, the manufacturer or distributor shall not levy the chargeback until the appeal is resolved. The commission shall hold a hearing on the matter no later than one hundred twenty (120) days from the time the appeal is filed unless all parties have otherwise agreed to settle the matter.

(iii) An appeal by the licensee under this subdivision (e)(4)(D) shall be in accordance with § 23-112-501 et seq.

(f) As used in this section, "routine maintenance" means motor vehicle upkeep not covered under the manufacturer's warranty, including without limitation tire rotations and the replacement of:

- (1) Tires;
- (2) Fluids;
- (3) Filters;
- (4) Batteries;
- (5) Belts;
- (6) Windshield wipers; and
- (7) Brake pads.

History. Acts 1997, No. 1154, § 2; 1999, No. 1042, § 7; 2007, No. 746, §§ 1, 2; 2009, No. 756, § 12; 2011, No. 1005, § 9; 2013, No. 1043, § 5; 2015, No. 1055, §§ 4, 5; 2019, No. 924, § 3.

Amendments. The 2015 amendment, in (c)(3), inserted “motor vehicle” following “charged by the,” substituted “comparable to the rate of” for “reasonable com-

pared to,” and substituted “in an economically similar area” for “in the motor vehicle dealer’s relevant market area”; and deleted “provided the dealer received preapproval pursuant to the established practices of the manufacturer or distributor for these programs” at the end of (e)(3)(A).

The 2019 amendment added (f).

23-112-314. Civil penalty — Definition.

(a) If after request for alternative proceedings or notice and hearing the Arkansas Motor Vehicle Commission finds that any person not holding a license under this chapter is guilty of any violation of this chapter or rules promulgated thereunder, the commission shall have the power and authority to impose a monetary penalty upon the person not to exceed one thousand dollars (\$1,000) per violation.

(b) Each day of violation of this chapter or of a rule shall constitute a separate violation subjecting the person to a separate civil penalty.

(c) Unless the penalty assessed under this section is paid within fifteen (15) days following the date for an appeal from the order, the commission shall have the power to file suit in Pulaski County Circuit Court to obtain a judgment for the amount of the penalty not paid.

(d)(1) Repeated violations by any person not holding a license under this chapter shall result in an increase in the penalty assessed by the commission.

(2) The terms “second” and “subsequent” violation as used in this section mean a violation of the same nature as a previously remedied violation that occurs within five (5) years of the remedied violation by any person not holding a license under this chapter.

(3) The commission shall have the power and authority to impose a penalty not to exceed two thousand five hundred dollars (\$2,500) for a second violation, with the penalty increasing in increments of two thousand five hundred dollars (\$2,500) for each subsequent violation.

History. Acts 1999, No. 1042, § 8; 2001, No. 1053, § 13; 2019, No. 315, § 2833.

Amendments. The 2019 amendment substituted “rule” for “regulation” in (b).

23-112-316. Delivery prior to sale — Disclosures — Definitions.

(a) As used in this section:

(1)(A) “Contract for sale” means the final agreement between a new motor vehicle dealer and a consumer that:

(i) Includes all material terms of the sale of a motor vehicle; and

(ii) Is binding upon the seller, the buyer, and any necessary third-party financier.

(B) “Contract for sale” includes a financing agreement and all material financing terms if the motor vehicle is to be financed; and

(2) "Delivery prior to sale" means a delivery of a motor vehicle by a new motor vehicle dealer to a consumer prior to the completion and execution by both parties of a contract for sale.

(b) If a new motor vehicle dealer engages in a delivery prior to sale, then the new motor vehicle dealer shall provide the consumer with an agreement for delivery prior to sale at the time of delivery of the motor vehicle to the consumer.

(c)(1) The agreement for delivery prior to sale shall be:

(A) Printed in at least 12-point type; and

(B) Signed by the consumer and the new motor vehicle dealer or the dealer's representative.

(2) The agreement for delivery prior to sale shall not be considered a contract for sale.

(d) The agreement for delivery prior to sale shall include all of the following terms:

(1) Unless the consumer is approved for financing and both parties have executed a contract for sale, then the new motor vehicle dealer shall not:

(A) Deposit or cash any down payment provided by the consumer; and

(B) Sell any motor vehicle that is presented by the consumer as a trade-in;

(2) The consumer retains the right to cancel the purchase of a motor vehicle if:

(A) The new motor vehicle dealer changes any terms; or

(B) The consumer fails to obtain financing that meets the agreed-upon interest rate;

(3) If a consumer who executes an agreement for delivery prior to sale chooses not to execute a contract for sale or otherwise cancels the purchase as provided under this section, then:

(A) The new motor vehicle dealer shall not:

(i) Impose any charge or penalty against the consumer; or

(ii) Deposit or cash any down payment provided by the consumer; and

(B) The new motor vehicle dealer shall immediately return any motor vehicle that was presented by the consumer as a trade-in; and

(4) If the consumer decides not to purchase the motor vehicle, the consumer shall return the motor vehicle to the new motor vehicle dealer within forty-eight (48) hours after the consumer notifies the dealer.

(e) If a consumer fails to return a motor vehicle pursuant to subdivision (d)(4) of this section, then the new motor vehicle dealer may recover the vehicle without the necessity of judicial process if the recovery is possible without committing an act of breaking or entering or breach of the peace.

(f) The Arkansas Motor Vehicle Commission shall promulgate rules to implement, enforce, and administer this section.

History. Acts 2005, No. 1687, § 1; deleted “and regulations” following “rules” 2019, No. 315, § 2834. in (f).

Amendments. The 2019 amendment

23-112-317. Motor vehicle dealer service and handling fees.

(a) A motor vehicle dealer may fill in the blanks on standardized forms in connection with the sale or lease of a new or a used motor vehicle if the motor vehicle dealer does not charge for the service of filling in the blanks or otherwise charge for preparing documents.

(b)(1) A motor vehicle dealer may charge a service and handling fee in connection with the sale or lease of a new or a used motor vehicle for:

(A) The handling, processing, and storage of documents; and

(B) Other administrative and clerical services.

(2)(A) The service and handling fee may be charged to allow cost recovery for motor vehicle dealers.

(B) A portion of the service and handling fee may result in profit to the motor vehicle dealer.

(c)(1) The Arkansas Motor Vehicle Commission shall determine by rule the amount of the service and handling fee that may be charged by a motor vehicle dealer. The service and handling fee shall be no less than zero dollars (\$0.00) and no more than one hundred twenty-nine dollars (\$129).

(2) If a service and handling fee is charged under this section, the service and handling fee shall be:

(A) Charged to all retail customers; and

(B) Disclosed on the retail buyer's order form as a separate itemized charge.

(3) If a service and handling fee is charged under this section, the service and handling fee is not required to be charged to all fleet sales.

(4) If a service and handling fee is charged under this section:

(A) A motor vehicle dealer may charge a purchaser of a motor vehicle a different service and handling fee if the purchaser utilizes:

(i) A manufacturer's sales plan or program; or

(ii) Financing through a finance company that caps a service and handling fee;

(B) The service and handling fee charged under this section shall be consistent with the service and handling fee authorized under:

(i) The manufacturer's sales plan or program;

(ii) The finance company policy; or

(iii) The laws of a foreign state with subject-matter jurisdiction.

(d) A preliminary worksheet on which a sale price is computed and that is shown to the purchaser, a retail buyer's order form from the purchaser, or a retail installment contract shall include in reasonable proximity to the place on the document where the service and handling fee authorized by this section is disclosed:

(1) The amount of the service and handling fee; and

(2) The following notice in type that is bold-faced, capitalized, underlined, or otherwise conspicuously set out from the surrounding written material:

“A SERVICE AND HANDLING FEE IS NOT AN OFFICIAL FEE. A SERVICE AND HANDLING FEE IS NOT REQUIRED BY LAW BUT MAY BE CHARGED TO THE CUSTOMER FOR PERFORMING SERVICES AND HANDLING DOCUMENTS RELATING TO THE CLOSING OF A SALE OR LEASE. THE SERVICE AND HANDLING FEE MAY RESULT IN PROFIT TO THE DEALER. THE SERVICE AND HANDLING FEE DOES NOT INCLUDE PAYMENT FOR THE PREPARATION OF LEGAL DOCUMENTS. THIS NOTICE IS REQUIRED BY LAW.”

(e) The Arkansas Motor Vehicle Commission may promulgate rules to implement, enforce, and administer this section.

History. Acts 2007, No. 366, § 1; 2013, No. 561, § 5; 2015, No. 1055, § 6. **Amendments.** The 2015 amendment added (c)(4).

23-112-319. Reimbursement claim by motor vehicle dealer.

(a)(1) A manufacturer shall compensate its new motor vehicle dealers for all labor and parts required by the manufacturer to perform recall repairs.

(2) The compensation for recall repairs required under subdivision (a)(1) of this section shall be reasonable.

(3) If recall parts or a remedy is not reasonably available to perform a recall service or repair on a used motor vehicle held for sale by a dealer authorized to sell and service new motor vehicles of the same line make of a motor vehicle within thirty (30) days of the manufacturer's issuing the initial notice of recall, and the manufacturer has issued a stop-sale order or do-not-drive order on the used motor vehicle, the manufacturer shall compensate the dealer at a prorated rate of at least one and twenty-five-hundredths percent (1.25%) of the value of the used motor vehicle per month beginning thirty (30) days from the date on which the stop-sale order or do-not-drive order was provided to the dealer until the earlier of:

(A) The date the recall parts or a remedy is made available; or

(B) The date the dealer sells, trades, or disposes of the affected used motor vehicle.

(b) This section applies only to a:

(1) Used motor vehicle subject to a safety or emissions recall in accordance with federal law and regulations and a stop-sale order or do-not-drive order has been issued and repair parts or a remedy remains unavailable for thirty (30) days or longer; and

(2) New motor vehicle dealer having an affected used motor vehicle:

(A) In inventory for sale at the time the stop-sale order or do-not-drive order was issued;

(B) For sale as a used motor vehicle as a consumer trade-in, incident to the purchase of a new motor vehicle from the dealer after the stop-sale order or do-not-drive order was issued; or

(C) For sale that is a line make of a used motor vehicle the dealer is franchised to sell or on which the dealer is authorized to perform recall repairs.

(c)(1) It is a violation of this section for a manufacturer to reduce the amount of compensation otherwise owed to a new motor vehicle dealer because the new motor vehicle dealer has submitted a claim for reimbursement under this section, including without limitation compensation owed through:

- (A) A chargeback;
- (B) Removal of the dealer from an incentive program; or
- (C) A reduction in the amount owed under an incentive program.

(2) However, subdivision (c)(1) of this section does not apply to a reduction in the amount of compensation owed to a new motor vehicle dealer by a manufacturer if the reduction is applied uniformly to all new motor vehicle dealers of the same line make in the state.

(d) A reimbursement claim made by a new motor vehicle dealer for a recall remedy or repair or for compensation when no part or repair is reasonably available and the motor vehicle is subject to a stop-sale order or do-not-drive order:

(1) Is subject to the same limitations and requirements as a warranty reimbursement claim made under § 23-112-313; or

(2) May be compensated to a franchised dealer by a manufacturer under a national recall compensation program if the compensation under the program is equal to or greater than the compensation under subsection (a) of this section or the manufacturer and dealer otherwise agree to the amount of compensation.

(e) A manufacturer may direct the manner and method in which a dealer demonstrates the inventory status of an affected used motor vehicle to determine eligibility for compensation under this section if the manner and method are not unduly burdensome and do not require that the dealer provide information that may be unduly burdensome to obtain.

(f) This section does not require that a manufacturer provide total compensation to a dealer that exceeds the total average trade-in value of the used motor vehicle.

(g) If a recall remedy for a used motor vehicle is available under federal law or federal regulation, a dealer may choose to be compensated under the federal statute or under this section but may not combine the recall remedies.

(h) The value of a used motor vehicle shall be the average trade-in value for used motor vehicles as indicated in an independent third-party guide for the year, make, and model of the affected used motor vehicle.

History. Acts 2019, No. 924, § 4.

SUBCHAPTER 4 — UNLAWFUL PRACTICES

SECTION.

23-112-403. Manufacturers, distributors,
second-stage manufactur-
ers, importers, or convert-
ers — Definition.

23-112-403. Manufacturers, distributors, second-stage manufacturers, importers, or converters — Definition.

(a) It shall be unlawful:

(1) For a manufacturer, distributor, second-stage manufacturer, importer, converter, distributor branch or division, or factory branch or division, or an officer, agent, or other representative thereof, to coerce or attempt to coerce any motor vehicle dealer:

(A) To order or accept delivery of any motor vehicles, appliances, equipment, parts, or accessories therefor or any other commodities which shall not have been voluntarily ordered by the motor vehicle dealer;

(B) To order or accept delivery of any motor vehicle with special features, appliances, accessories, or equipment not included in the list price of the motor vehicle as publicly advertised by the manufacturer thereof;

(C) To order for any person any parts, accessories, equipment, machinery, tools, appliances, or any commodity whatsoever;

(D) To contribute or pay money or anything of value into any cooperative or other advertising program or fund; or

(E) To file for or to use a legal or “d/b/a” name or identification other than a name of choice by the dealer;

(2) For a manufacturer, distributor, distributor branch or division, or factory branch or division, or an officer, agent, or other representative thereof:

(A)(i) To refuse to deliver, in reasonable quantities and within a reasonable time after receipt of a dealer’s order to any licensed motor vehicle dealer having a franchise or contractual arrangement for the retail sale of new motor vehicles sold or distributed by the manufacturer, distributor, distributor branch or division, or factory branch or division, any motor vehicles that are covered by the franchise or contract specifically publicly advertised by the manufacturer, distributor, distributor branch or division, or factory branch or division to be available for immediate delivery.

(ii) However, the failure to deliver any motor vehicle shall not be considered a violation of this chapter if the failure is due to forces of nature, work stoppages or delays due to strikes or labor difficulties, freight, embargoes, or other causes over which the manufacturer or distributor, or any agent thereof, has no control;

(B)(i) To engage in any of the following:

(a) To coerce or attempt to coerce a motor vehicle dealer to enter into an agreement with the manufacturer, distributor, distributor

branch or division, factory branch or division, or officer, agent, or other representative;

(b) To coerce or attempt to coerce a motor vehicle dealer to use a manufacturer vehicle purchase add-on product or service; or

(c) To do an act prejudicial to the motor vehicle dealer by threatening to cancel a franchise or a contractual agreement existing between the manufacturer, distributor, distributor branch or division, or factory branch or division and the motor vehicle dealer.

(ii) However, good faith notice to any motor vehicle dealer of the dealer's violation of any terms or provisions of the franchise or contractual agreement shall not constitute a violation of this chapter;

(C)(i)(a) To terminate or cancel the franchise or selling agreement of any dealer without due cause.

(b) The nonrenewal of a franchise or selling agreement without due cause shall constitute an unfair termination or cancellation, regardless of the terms or provisions of the franchise or selling agreement.

(c) As used in this subchapter, tests for determining what constitutes due cause for a manufacturer or distributor to terminate a franchise or sales and service agreement include whether the motor vehicle dealer:

(1) Has transferred a majority ownership interest in the dealership without the manufacturer's or distributor's consent;

(2) Has made a material misrepresentation or committed a fraudulent act, or both, in applying for or in acting under the franchise agreement;

(3) Has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against him or her that has not been discharged within sixty (60) days after the filing, is in default under a security agreement in effect with the manufacturer or distributor, or is in receivership;

(4) Has engaged in unfair business or trade practices;

(5) Has failed to fulfill the warranty obligations of the manufacturer or distributor required to be performed by the motor vehicle dealer;

(6) Has inadequate motor vehicle sales and service facilities, equipment, vehicle parts, and unqualified service personnel to provide for the needs of the consumers for the motor vehicles handled by the franchisee and is rendering inadequate service to the public;

(7) Has failed to comply with an applicable federal, state, or local licensing law;

(8) Has been convicted of a crime, the effect of which would be detrimental to the manufacturer, distributor, or dealership;

(9) Has failed to operate in the normal course of business for ten (10) consecutive business days or has terminated his or her business;

(10) Has relocated his or her place of business without the manufacturer's or distributor's consent; or

(11) Has failed to comply with the terms of the franchise, the

reasonableness and fairness of the franchise terms, and the extent and materiality of the franchisee's failure to comply.

(d) A manufacturer, distributor, second-stage manufacturer, importer, converter, manufacturer branch or division, or distributor branch or division shall have the burden of proving whether there is due cause to terminate a franchise or sales and service agreement.

(ii)(a) The manufacturer, distributor, distributor branch or division, factory branch or division, or officer, agent, or other representative thereof shall notify a motor vehicle dealer in writing and forward a copy of the notice to the Arkansas Motor Vehicle Commission of the termination or cancellation of the franchise or selling agreement of the dealer at least sixty (60) days before the effective date thereof, stating the specific grounds for the termination or cancellation.

(b) However, in the event that the commission finds that the franchise or selling agreement has been abandoned by the dealer, the commission, for good cause, may waive the sixty-day notice requirement and allow for the immediate termination of the franchise or selling agreement.

(iii)(a) The manufacturer, distributor, distributor branch or division, factory branch or division, or officer, agent, or other representative thereof shall notify a motor vehicle dealer in writing and forward a copy of the notice to the commission at least sixty (60) days before the contractual term of its franchise or selling agreement expires that the franchise or selling agreement will not be renewed, stating the specific grounds for the nonrenewal in those cases in which there is no intention to renew it.

(b) In no event shall the contractual term of any franchise or selling agreement expire without the written consent of the motor vehicle dealer involved prior to the expiration of at least sixty (60) days following the written notice.

(iv)(a) A motor vehicle dealer who receives written notice that its franchise or selling agreement is being terminated or cancelled or who receives written notice that its franchise or selling agreement will not be renewed may file with the commission within the sixty-day notice period a verified complaint for the commission's determination as to whether the termination or cancellation or nonrenewal is unfair under this chapter.

(b) That franchise or selling agreement shall continue in effect until final determination of the issues raised in the complaint as allowed under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., notwithstanding anything to the contrary contained in this chapter or in the franchise or selling agreement.

(c) A manufacturer, distributor, second-stage manufacturer, importer, converter, manufacturer branch or division, or distributor branch or division shall have the burden of proving whether there is due cause to terminate a franchise or sales and service agreement.

(v)(a) If the franchise agreement, sales and service agreement, or bona fide contract is terminated or cancelled, the terminating or

canceled party shall notify the commission of the termination or cancellation of the franchise or selling agreement at least sixty (60) days before the effective date.

(b) For motor vehicles other than motor homes, this subdivision (a)(2)(C)(v) applies to both voluntary and involuntary termination or cancellation of the franchise or selling agreement;

(D) To resort to or use any false or misleading advertisement in connection with its business as a manufacturer, distributor, distributor branch or division, factory branch or division, or officer, agent, or other representative thereof;

(E)(i) To offer to sell or to sell any new motor vehicle to any motor vehicle dealer at a lower actual price therefor than the actual price charged to any other motor vehicle dealer for the same model vehicle similarly equipped or to utilize any device, including, but not limited to, sales promotion plans or programs, which results in a lesser actual price.

(ii) However, the provisions of this subdivision (a)(2)(E) shall not apply:

(a) To sales to a motor vehicle dealer for resale to any unit of federal, state, or local government;

(b) To sales to a motor vehicle dealer of any motor vehicle ultimately sold, donated, or used by the dealer in a driver education program; or

(c) So long as a manufacturer or distributor, or any agent thereof, offers to piggyback bid allowances to all motor vehicle dealers of the same line make at the same allowance for sales to a local government in that dealer's relevant market area.

(iii) Nothing contained in this subdivision (a)(2)(E) shall be construed to prevent the utilization of sales promotion plans or programs or the offering of volume discounts through new motor vehicle dealers, for fleet or volume purchasers, if the program is available to all new motor vehicle dealers from the same manufacturer in this state;

(F) To offer to sell or to sell any new motor vehicle to any person, except a wholesaler or distributor, at a lower actual price than the actual price offered and charged to a motor vehicle dealer for the same model vehicle similarly equipped or to utilize any device which results in a lesser actual price;

(G)(i) To offer to sell or to sell parts and accessories to any new motor vehicle dealer for use in his or her own business for the purpose of repairing or replacing the parts and accessories, or comparable parts and accessories, at a lower actual price than the actual price charged to any other new motor vehicle dealer for similar parts and accessories for use in its own business.

(ii) However, it is recognized that certain motor vehicle dealers operate and serve as wholesalers of parts and accessories to retail outlets. Therefore, nothing contained in this subdivision (a)(2)(G) shall be construed to prevent a manufacturer or distributor, or any

agent thereof, from selling to a motor vehicle dealer who operates and serves as a wholesaler of parts and accessories such parts and accessories as may be ordered by the motor vehicle dealer for resale to retail outlets at a lower actual price than the actual price charged a motor vehicle dealer who does not operate or serve as a wholesaler of parts and accessories;

(H)(i) To prevent or attempt to prevent by contract or otherwise any motor vehicle dealer from changing the capital structure of its dealership or the means by or through which it finances the operation of the dealership, provided that:

(a) The dealer at all times meets any capital standards agreed to between the dealership and the manufacturer or distributor; and

(b) The standards are deemed reasonable by the commission.

(ii) If the dealer of record requests consent from the manufacturer or distributor in writing on the form, if any, generally utilized or required by the manufacturer or distributor for such purposes and the manufacturer or distributor fails to respond in writing, giving or withholding consent, within sixty (60) days of receipt of the written request, consent is deemed to be given;

(I)(i) Notwithstanding the terms of any franchise agreement, to fail to give effect or to attempt to prevent any sale or transfer of a dealer, dealership, or franchise or interest therein, or management thereof, provided that the manufacturer or distributor has received sixty (60) days' written notice prior to the transfer or sale, and unless:

(a) The transferee does not meet the criteria generally applied by the manufacturer in approving new motor vehicle dealers or agree to be bound by all the terms and conditions of the dealer agreement, and the manufacturer so advises its dealer within sixty (60) days of receipt of the notice; or

(b) It is shown to the commission after a hearing that the result of such a sale or transfer will be detrimental to the public or the representation of the manufacturer or distributor.

(ii) If the franchisee of record requests consent from the manufacturer or distributor in writing on the form, if any, generally utilized or required by the manufacturer or distributor for such purposes and the manufacturer or distributor fails to respond by giving or withholding consent in writing within sixty (60) days of receipt of the written request, consent is deemed to be given;

(J)(i) Notwithstanding the terms of any franchise agreement, to prevent, attempt to prevent, or refuse to honor the succession to a dealership by any legal heir or devisee under the will of a dealer or under the laws of descent and distribution applicable to the decedent's estate, provided that the manufacturer or distributor has received sixty (60) days' written notice prior to the transfer or sale, and unless:

(a) The transferee does not meet the criteria generally applied by the manufacturer in approving new motor vehicle dealers or agree to be bound by all the terms and conditions of the dealer agreement, and

the manufacturer so advises its dealer within thirty (30) days of receipt of the notice; or

(b) It is shown to the commission, after notice and hearing, that the result of such a succession will be detrimental to the public interest or to the representation of the manufacturer or distributor.

(ii) However, nothing in this subdivision (a)(2)(J) shall prevent a dealer, during his or her lifetime, from designating any person as his or her successor dealer by written instrument filed with the manufacturer or distributor.

(iii) If the dealer's successor, heir, or devisee requests consent from the manufacturer or distributor in writing on the form, if any, generally utilized or required by the manufacturer or distributor for such purposes and the manufacturer or distributor fails to respond by giving or withholding consent in writing, within thirty (30) days of receipt of the written request, consent is deemed to be given;

(K)(i) Notwithstanding the terms of any franchise agreement, to fail to pay to a dealer or any lienholder in accordance with their respective interests after the termination of franchise:

(a) The dealer cost plus any charges by the manufacturer, distributor, or a representative for distribution, delivery, and taxes, less all allowances paid to the dealer by the manufacturer, distributor, or representative for new, unsold, undamaged, and complete motor vehicles of current model year and one (1) year prior model year in the dealer's inventory;

(b) The dealer cost of each new, unused, undamaged, and unsold part or accessory if the part or accessory:

(1) Was purchased from the manufacturer by the dealer and is in the original package;

(2) Is identical to a part or accessory in the current parts catalogue except for the number assigned to the part or accessory; or

(3) Was purchased in the ordinary course of business by the dealer from another authorized dealer so long as the authorized dealer purchased the part or accessory directly from the manufacturer or distributor or from an outgoing authorized dealer as part of the dealer's initial inventory;

(c) The fair market value of each undamaged sign owned by the dealer which bears a trademark or trade name used or claimed by the manufacturer, distributor, or representative, if the sign was purchased from or purchased at the request of the manufacturer, distributor, or representative;

(d) The fair market value of all special tools and automotive service equipment owned by the dealer that were recommended in writing and designated as special tools and equipment and purchased from or purchased at the request of the manufacturer, distributor, or representative, if the tools and equipment are in usable and good condition except for reasonable wear and tear;

(e) The cost of transporting, handling, packing, and loading of motor vehicles, parts, signs, tools, and equipment subject to repurchase;

(f) The balance of all claims for warranty and recall service and all other money owed by the manufacturer to the dealer;

(g)(1) Except as provided under subdivision (a)(2)(K)(i)(g)(2) of this section, the fair market value of the franchise that is at least equivalent to the fair market value of the franchise one (1) day before the manufacturer announces the action that results in the termination or discontinuance of a line make.

(2) If the termination, cancellation, discontinuance, or nonrenewal is due to a manufacturer's change in distributors or manufacturer, the manufacturer may avoid paying fair market value to the new motor vehicle dealer if the distributor, manufacturer, new distributor, or new manufacturer offers the new motor vehicle dealer a franchise agreement with terms substantially similar to terms offered to other same line make new motor vehicle dealers;

(h)(1) Compensation for the actual pecuniary loss caused by the franchise termination, cancellation, or nonrenewal unless for due cause.

(2) In determining the actual pecuniary loss, the value of any continued service or parts business available to the dealer for the line make covered by the franchise shall be considered. If the dealer and the manufacturer, importer, or distributor cannot agree on the amount of compensation to be paid under this subchapter, either party may file an action in a court of competent jurisdiction; or

(i) Any sums due as provided by subdivision (a)(2)(K)(i)(a) of this section within sixty (60) days after termination of a franchise and any sums due as provided by subdivisions (a)(2)(K)(i)(b)-(g) of this section within ninety (90) days after termination of a franchise. As a condition of payment, the dealer shall comply with reasonable requirements with respect to the return of inventory as are set out in the terms of the franchise agreement. A manufacturer, distributor, or representative who fails to pay those sums within the prescribed time or at such time as the dealer and lienholder, if any, proffer good title before the prescribed time for payment, is liable to the dealer for:

(1) The greatest of dealer cost, fair market value, or current price of the inventory;

(2) Interest on the amount due calculated at the rate applicable to a judgment of a court; and

(3) Reasonable attorney's fees and costs.

(ii) Obligations under this subdivision (a)(2)(K) do not apply if the termination is a result of the conviction of the franchisee in a court of competent jurisdiction of an offense that is punishable by a term of imprisonment in excess of one (1) year and the offense is substantially related to the business conducted pursuant to the franchise;

(L)(i) To fail or refuse to offer its same line make franchised dealers all models manufactured for that line make.

(ii) No additional requirements over the requirements originally required to initially obtain a dealership may be required of existing franchised dealers to receive any model by that line make;

(M)(i) To offer to sell or to sell any motor vehicle to a consumer, except through a licensed new motor vehicle dealer holding a franchise, a sales and service agreement, or a bona fide contract for the line make covering the new motor vehicle or as may otherwise be provided in subdivision (a)(3) of this section.

(ii) This subdivision (a)(2)(M) does not apply to manufacturer sales of new motor vehicles to the federal government, charitable organizations, or employees of the manufacturer;

(N) To prohibit or require a dealer to enter into a franchise or sales agreement with third parties, regardless of the location of the dealership or proposed dealership;

(O)(i) To require, coerce, or attempt to coerce any franchisee in this state to refrain from or to terminate, cancel, or refuse to continue any franchise based upon participation by the franchisee in the management of, investment in, or the acquisition of a franchise for the sale of any other line of new motor vehicle or related products in the same or separate facilities as those of the franchiser.

(ii) This subdivision (a)(2)(O) does not apply unless:

(a) The franchisee maintains a reasonable line of credit for each make or line of new motor vehicle;

(b) The franchisee remains in compliance with the franchise and any reasonable facilities requirement of the franchiser; and

(c) No change is made in the principal management of the franchisee.

(iii) The reasonable facilities requirement shall not include any requirement that the franchisee establish or maintain exclusive facilities, personnel, or display space when such requirements would not otherwise be justified by reasonable business considerations.

(iv)(a) Before the addition of a line make to the dealership facilities, the franchisee must first request consent of the franchiser, if required by the franchise agreement.

(b) Any decision of the franchiser with regard to dualing of two (2) or more franchises shall be granted or denied within sixty (60) days after a written request from the new motor vehicle dealer. The franchiser's failure to respond timely to a dualing request shall be deemed to be approval of the franchisee's request;

(P)(i) To fail to continue in full force and operation a motor vehicle dealer franchise agreement, notwithstanding a change, in whole or in part, of an established plan or system of distribution or ownership of the manufacturer of the motor vehicles offered for sale under the franchise agreement.

(ii) The appointment of a new importer or distributor for motor vehicles offered for sale under a franchise agreement described in subdivision (a)(2)(P)(i) of this section shall be deemed to be a change of an established plan or system of distribution;

(Q)(i)(a) Unless the manufacturer's, distributor's, second-stage manufacturer's, importer's, converter's, manufacturer's branch or division, or distributor's branch or division requirements are reason-

able and justifiable in light of the current and reasonably foreseeable projections of economic conditions, financial expectations, and the motor vehicle dealer's market and notwithstanding the terms of a franchise agreement or sales and service agreement, to require, coerce, or attempt to coerce any new motor vehicle dealer by program, policy, standard, or otherwise to:

- (1) Change location of the dealership;
 - (2) Make any substantial changes, alterations, or remodeling to a motor vehicle dealer's sales or service facilities; or
 - (3) Replace a motor vehicle dealer's sales or service facilities.
- (b) A manufacturer, distributor, second-stage manufacturer, importer, converter, manufacturer branch or division, or distributor branch or division shall have the burden of proving that changes, alterations, remodeling, or replacement to a motor vehicle dealer's sales or service facilities are reasonable and justifiable under this subchapter.

(ii)(a) However, a manufacturer, distributor, second-stage manufacturer, importer, converter, manufacturer branch or division, or distributor branch or division, consistent with its allocation obligations at law and to its other same line make motor vehicle dealers, may provide to a motor vehicle dealer a commitment to supply additional vehicles or provide a loan or grant of money as an inducement for the motor vehicle dealer to expand, improve, remodel, alter, or renovate its facilities if the provisions of the commitment are contained in a writing voluntarily agreed to by the dealer and are made available, on substantially similar terms, to any of the licensee's other same line make dealers who voluntarily agree to make a substantially similar facility expansion, improvement, remodeling, alteration, or renovation.

(b) Subdivision (a)(2)(Q)(i) and subdivision (a)(2)(Q)(ii)(a) of this section do not require a manufacturer, distributor, second-stage manufacturer, importer, converter, manufacturer branch or division, or distributor branch or division to provide financial support for or contribution to the purchase sale of the assets of or equity in a motor vehicle dealer or a relocation of a motor vehicle dealer because such support has been provided to other purchases, sales, or relocations.

(c) A manufacturer, distributor, second-stage manufacturer, importer, converter, manufacturer branch or division, or distributor branch or division shall not take or threaten to take any action that is unfair or adverse to a dealer who does not enter into an agreement pursuant to subdivision (a)(2)(Q)(i) and subdivision (a)(2)(Q)(ii)(a) of this section.

(d) This subdivision does not affect any contract between a licensee and any of its dealers regarding relocation, expansion, improvement, remodeling, renovation, or alteration which exists on July 27, 2011;

(R) To unreasonably withhold approval for a new motor vehicle dealer to purchase substantially similar goods and services related to facility changes, alterations, or remodels from vendors the dealer chooses;

(S) To require as a prerequisite to receiving a model or a series of vehicles a dealer to:

(i) Pay an extra fee or remodel, renovate, or recondition the dealer's existing facilities unless justified by the technological requirements for the sale or service of a vehicle;

(ii) Purchase unreasonable advertising displays, training, tools, or other materials;

(iii) Establish exclusive facilities; or

(iv) Establish dedicated personnel;

(T)(i)(a) To use any written instrument, agreement, or waiver, to attempt to nullify or modify any provision of this chapter or prevent a new motor vehicle dealer from bringing an action in a particular forum otherwise available under law.

(b) An instrument contrary to this subdivision (a)(2)(T)(i) is void.

(c) However, this subdivision shall not apply to:

(1) Voluntary agreements in which separate and valuable consideration has been offered and accepted; or

(2) Settlement agreements entered into as a result of a dispute.

(ii)(a) Except as provided in subdivision (a)(2)(Q)(ii)(b) of this section, a manufacturer, distributor, or factory branch shall not directly or indirectly condition any of the following on the willingness of a motor vehicle dealer, proposed new motor vehicle dealer, or owner of an interest in the dealership facility to enter into a site-control agreement or exclusive-use agreement:

(1) Awarding a franchise to a prospective new motor vehicle dealer;

(2) Adding a line make or franchise to an existing motor vehicle dealer;

(3) Renewing a franchise of an existing motor vehicle dealer;

(4) Approving the relocation of an existing motor vehicle dealer's facility; or

(5) Approving the sale or transfer of the ownership of a franchise.

(b) This subdivision does not apply to a site-control agreement or an exclusive-use agreement if the site-control agreement or an exclusive-use agreement:

(1) Is voluntarily entered into by the motor vehicle dealer or the motor vehicle dealer's lessor;

(2) Clearly and conspicuously discloses that the site-control agreement or an exclusive-use agreement is voluntary; and

(3) Provides for separate and valuable consideration to the motor vehicle dealer or motor vehicle dealer's lessor.

(iii) Any provision contained in any agreement that is inconsistent with this subchapter is voidable at the election of the affected motor vehicle dealer or owner of an interest in the dealership facility; or

(U) To do any of the following:

(i) Fail to offer to all of its franchisees of the same line make any consumer rebates, dealer incentives, price or interest rate reduction, or finance terms that the franchisor offers or advertises;

(ii) Offer rebates, cash incentives, or other promotional items for the sale of a vehicle by its franchisees unless the same rebate, cash incentive, or promotion is offered to all of its franchisees of the same line make, and any rebate, cash incentive, or promotion that is based on the sale of an individual vehicle is not increased for meeting a performance standard;

(iii) Unreasonably discriminate among its franchisees in any program that provides assistance to its franchisees, including internet listings, sales leads, warranty policy adjustments, marketing programs, or dealer recognition programs;

(iv) Fail to offer rebates, cash incentives, or other promotional incentive programs on a fair and equitable or proportionally equivalent basis to its franchisees of the same line make; or

(v) Require a motor vehicle dealer to improve the dealer's facilities, including signs, or to replace factory required and approved facility improvements completed within the last ten (10) years to qualify for a new vehicle sales incentive program;

(3)(A) For a manufacturer, distributor, distributor branch or division, or factory branch or division, or an officer, agent, or other representative thereof to own, operate, or control any motor vehicle dealer.

(B) Subdivision (a)(3)(A) of this section does not prohibit:

(i) The operation by a manufacturer or distributor of a motor vehicle dealer for a temporary period, not to exceed one (1) year, during the transition from one (1) owner or operator to another, provided that the commission may extend the one (1) year period if the transition is not complete;

(ii) The ownership or control of a motor vehicle dealer by a manufacturer during a period in which the motor vehicle dealer is being sold under a bona fide contract or purchase option to the operator of the dealership;

(iii) The ownership, operation, or control of a motor vehicle dealer by a manufacturer, if:

(a) The manufacturer has been engaged in the retail sale of new motor vehicles at the location for a continuous period of five (5) years prior to January 1, 1999; and

(b) The commission determines after a hearing on the matter at the request of any party that there is no prospective new motor vehicle dealer available to own and operate the franchise in a manner consistent with the public interest; or

(iv) The ownership, operation, or control of a motor vehicle dealer by a manufacturer, if the manufacturer is:

(a) A manufacturer of specialty vehicles, such as unassembled kits, and does not sell more than ten (10) assembled vehicles annually; or

(b) A custom motorcycle builder and does not sell more than five (5) assembled motorcycles annually;

(4)(A) For a manufacturer to unfairly compete with a motor vehicle dealer of the same line make, operating under a franchise, in the relevant market area.

(B) "Unfairly compete", as used in this section, includes, but is not limited to:

(i) Internet solicitations; and

(ii) Preferential treatment of manufacturer-operated dealerships in the supply of inventory, both as to quantity and availability of the latest models of that line make, supply of parts, and payments for warranty and recall claims.

(C) Ownership, operation, or control of a new motor vehicle dealer by a manufacturer under the conditions set forth in subdivisions (a)(3)(A)(i)-(iv) of this section shall not constitute a violation of this subdivision (a)(4); or

(5)(A) To unreasonably reduce a motor vehicle dealer's area of sales effectiveness, trade area, or similar designation without giving a notice of at least thirty (30) days of the proposed reduction.

(B) The change shall not take effect if the dealer commences an administrative action to determine whether there is good cause for the change within the thirty-day notice period.

(C) The burden of proof in an action under this subdivision (a)(5) shall be on the manufacturer, distributor, second-stage manufacturer, importer, converter, manufacturer branch or division, or distributor branch or division to prove that good cause exists to change the motor vehicle dealer's area of sales effectiveness, trade area, or similar designation.

(b)(1) Notwithstanding the terms of any franchise except a settlement agreement voluntarily entered into, it shall be a violation for a motor vehicle franchiser to require a motor vehicle franchisee to agree to a term or condition in any franchise as a condition of the offer, grant, or renewal of the franchise or the approval of the sale, acquisition, or transfer of the assets of a new motor vehicle dealer, which:

(A) Requires the motor vehicle franchisee to waive trial by jury in actions involving the motor vehicle franchiser;

(B) Specifies the jurisdictions, venues, or tribunal in which disputes arising with respect to the franchise, lease, or agreement shall or shall not be submitted for resolution, or otherwise prohibits a motor vehicle franchisee from bringing an action in a particular forum otherwise available under federal or state law;

(C) Requires a new motor vehicle dealer to pay the attorney's fees of a manufacturer, importer, second-stage manufacturer, converter, or distributor;

(D) Requires the motor vehicle franchisee to waive any remedy or defense available to the franchisee or other provision protecting the interests of the franchisee under this chapter; or

(E)(i) Requires that disputes between the motor vehicle franchiser and motor vehicle franchisee be submitted to binding arbitration or to any other binding alternative dispute resolution procedure provided by the franchiser.

(ii) However, any franchise, lease, or agreement may authorize the submission of a dispute to arbitration or to binding alternative

dispute resolution if the motor vehicle franchiser and motor vehicle franchisee voluntarily agree to submit the dispute to binding arbitration or binding alternative dispute resolution after the dispute arises.

(iii) If the franchiser and franchisee agree to binding arbitration, the arbitrator shall apply the provisions of this chapter in resolving the pertinent controversy and shall provide the parties to a contract with a written explanation of the factual and legal basis for the award. Either party may appeal to the commission a decision of an arbitrator on the ground that the arbitrator failed to apply this chapter.

(2) For the purposes of this section, it shall be presumed that a motor vehicle franchisee has been required to agree to a term or condition in violation of this section as a condition of the offer, grant, or renewal of a franchise or of any lease or agreement ancillary or collateral to a franchise, if the motor vehicle franchisee, at the time of the offer, grant, or renewal of the franchise, lease, or agreement or the approval of the sale, acquisition, or transfer of the assets of a new motor vehicle dealer, is not offered the option of an identical franchise, lease, or agreement without the terms or conditions prescribed by this section.

(c) Concerning any sale of a motor vehicle or vehicles to the State of Arkansas or to the several counties or municipalities thereof or to any other political subdivision thereof, no manufacturer or distributor shall offer any discounts, refunds, or any other similar type inducements to any dealer without making the same offers to all other of its dealers within the state. If the inducements are made, the manufacturer or distributor shall give simultaneous notice thereof to all of its dealers within the state.

History. Acts 1975, No. 388, § 5; 1985, No. 1032, § 3; 1985, No. 1058, § 3; A.S.A. 1947, § 75-2305; Acts 1987, No. 663, § 1; 1989, No. 65, §§ 4, 5; 1991, No. 411, § 4; 1991, No. 730, § 1; 1997, No. 1154, § 13; 1999, No. 1042, § 9; 2001, No. 1053, § 16; 2007, No. 746, §§ 3, 4; 2009, No. 756, §§ 13-15; 2011, No. 800, § 1; 2011, No. 1005, §§ 10-16; 2013, No. 561, § 6; 2013, No. 1043, §§ 6-8; 2013, No. 1133, §§ 9, 10; 2015, No. 1055, § 7; 2019, No. 391, § 15; 2019, No. 924, §§ 5-7.

Amendments. The 2015 amendment inserted (a)(2)(B)(i)(b); and redesignated former (a)(2)(B)(i)(b) as (a)(2)(B)(i)(c).

The 2019 amendment by No. 391 redesignated the introductory language of (a)(3)

and (a)(3)(A) as (a)(3)(A) and (a)(3)(B), respectively; rewrote the introductory language of (a)(3)(B); inserted “ownership, operation, or control of a motor vehicle dealer by a manufacturer, if the” preceding “manufacturer” in (a)(3)(B)(v); and made stylistic changes.

The 2019 amendment by No. 924 substituted “ten (10) years” for “seven (7) years” in (a)(2)(U)(v); in (a)(3)(B)(i), inserted “or distributor” and added “provided that the commission may extend the one (1) year period if the transition is not complete”; repealed (a)(3)(A)(iv); redesignated (a)(3)(A)(v) as (a)(3)(A)(iv); and made stylistic changes.

SUBCHAPTER 6 — USED MOTOR VEHICLE BUYERS PROTECTION

SECTION.

23-112-613. Delivery prior to sale — Disclosures — Definitions.

23-112-614. Auto auction fees for salvage-

titled or parts-only titled vehicles.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

23-112-613. Delivery prior to sale — Disclosures — Definitions.

(a) As used in this section:

(1)(A) “Contract for sale” means the final agreement between a used motor vehicle dealer and a consumer that:

(i) Includes all material terms of the sale of a motor vehicle; and

(ii) Is binding upon the seller, the buyer, and any necessary third-party financier.

(B) “Contract for sale” includes a financing agreement and all material financing terms if the motor vehicle is to be financed; and

(2) “Delivery prior to sale” means a delivery of a motor vehicle by a used motor vehicle dealer to a consumer prior to the completion and execution by both parties of a contract for sale.

(b) If a used motor vehicle dealer engages in a delivery prior to sale, then the used motor vehicle dealer shall provide the consumer with an agreement for delivery prior to sale at the time of delivery of the motor vehicle to the consumer.

(c)(1) The agreement for delivery prior to sale shall be:

(A) Printed in at least 12-point type; and

(B) Signed by the consumer and the used motor vehicle dealer or the dealer’s representative.

(2) The agreement for delivery prior to sale shall not be considered a contract for sale.

(d) The agreement for delivery prior to sale shall include all of the following terms:

(1) Unless the consumer is approved for financing and both parties have executed a contract for sale, then the used motor vehicle dealer shall not:

- (A) Deposit or cash any down payment provided by the consumer; and
- (B) Sell any motor vehicle that is presented by the consumer as a trade-in;
- (2) The consumer retains the right to cancel the purchase of a motor vehicle if:
 - (A) The used motor vehicle dealer changes any terms; or
 - (B) The consumer fails to obtain financing that meets the agreed-upon interest rate;
- (3) If a consumer who executes an agreement for delivery prior to sale chooses not to execute a contract for sale or otherwise cancels the purchase as provided under this section, then:
 - (A) The used motor vehicle dealer shall not:
 - (i) Impose any charge or penalty against the consumer; or
 - (ii) Deposit or cash any down payment provided by the consumer; and
 - (B) The used motor vehicle dealer shall immediately return any motor vehicle that was presented by the consumer as a trade-in; and
- (4) If the consumer decides not to purchase the motor vehicle, the consumer shall return the motor vehicle to the used motor vehicle dealer within forty-eight (48) hours after the consumer notifies the dealer.
- (e) If a consumer fails to return a motor vehicle pursuant to subdivision (d)(4) of this section, then the used motor vehicle dealer may recover the vehicle without the necessity of judicial process if the recovery is possible without committing an act of breaking or entering or breach of the peace.
- (f) The Division of Arkansas State Police shall promulgate rules to implement, enforce, and administer this section.

History. Acts 2005, No. 1687, § 2; deleted “and regulations” following “rules” 2019, No. 315, § 2835. in (f).

Amendments. The 2019 amendment

23-112-614. Auto auction fees for salvage-titled or parts-only titled vehicles.

- (a) A five-dollar (\$5.00) fee shall be charged to the buyer of each item at an auto auction that is sold on a certificate of title that is labeled “salvage” or “parts-only”.
- (b) The fee is special revenue and shall be deposited into the State Treasury.
- (c) The Treasurer of State shall transfer the special revenues received under this section on the last business day of each month as follows:
 - (1) Fifty percent (50%) for the Division of Environmental Quality to be used for inspection and oversight of auto auctions to enforce all laws and rules administered by the Division of Environmental Quality; and

(2) Fifty percent (50%) for the Division of Arkansas State Police to be used for inspection and oversight of auto auctions.

History. Acts 2005, No. 1780, § 2; substituted “Division of Environmental 2007, No. 827, § 191; 2009, No. 639, § 1; Quality” for “Arkansas Department of En- 2011, No. 265, § 2; 2019, No. 910, § 3244. vironmental Quality” twice in (c)(1).

Amendments. The 2019 amendment

CHAPTER 113

LOCAL OPTION HORSE RACING AND GREYHOUND
RACING ELECTRONIC GAMES OF SKILL ACT

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. AUTHORIZATION OF WAGERING ON ELECTRONIC GAMES OF SKILL SUBJECT TO APPROVAL AT LOCAL OPTION ELECTION.
- 3. ARKANSAS RACING COMMISSION.
- 4. CONTRIBUTION TO PURSES AND PROMOTION OF ARKANSAS THOROUGHBRED AND GREYHOUND BREEDING ACTIVITIES.
- 5. PRIVILEGE FEES.
- 6. MISCELLANEOUS.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

23-113-103. Definitions.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

23-113-103. Definitions.

As used in this chapter:

- (1) “Arkansas Greyhound Racing Law” means the Arkansas Greyhound Racing Law, § 23-111-101 et seq.;
- (2) “Arkansas Horse Racing Law” means the Arkansas Horse Racing Law, § 23-110-101 et seq.;

(3) “Commission” means the Arkansas Racing Commission or its successor having jurisdiction over horse racing and greyhound racing in this state;

(4) [Repealed.]

(5)(A) “Electronic games of skill” means games played through any electronic device or machine that afford an opportunity for the exercise of skill or judgment when the outcome is not completely controlled by chance alone.

(B) “Electronic games of skill” does not include pari-mutuel wagering on horse racing and greyhound racing governed by the Arkansas Horse Racing Law, § 23-110-101 et seq., or the Arkansas Greyhound Racing Law, § 23-111-101 et seq., whether pari-mutuel wagering on live racing, simulcast racing, or races conducted in the past and rebroadcast by electronic means;

(6) “Franchise holder” means any person holding a franchise to conduct horse racing under the Arkansas Horse Racing Law, § 23-110-101 et seq., or greyhound racing under the Arkansas Greyhound Racing Law, § 23-111-101 et seq.;

(7) “Net wagering revenues from electronic games of skill” means the gross wagering revenues received by a franchise holder from wagers placed by patrons on electronic games of skill, less amounts paid out or separately reserved under rules of the commission for future pay out to patrons on the wagers; and

(8) “Person” means any individual, corporation, partnership, association, trust, or other entity.

History. Acts 2005, No. 1151, § 1; 2019, No. 910, § 3517.

Amendments. The 2019 amendment repealed the definition for “Director”.

SUBCHAPTER 2 — AUTHORIZATION OF WAGERING ON ELECTRONIC GAMES OF SKILL SUBJECT TO APPROVAL AT LOCAL OPTION ELECTION

SECTION.

23-113-201. Wagering on electronic games of skill conducted

by franchise holders —
Limitations.

23-113-201. Wagering on electronic games of skill conducted by franchise holders — Limitations.

(a)(1) In addition to pari-mutuel wagering on horse racing and greyhound racing authorized by the Arkansas Horse Racing Law, § 23-110-101 et seq., and the Arkansas Greyhound Racing Law, § 23-111-101 et seq., respectively, any franchise holder may conduct wagering on electronic games of skill in accordance with this chapter at any time or times during the calendar year at locations on the grounds of the franchise holder’s racetrack park site where the franchise holder is authorized by the Arkansas Racing Commission to conduct pari-mutuel wagering on horse racing or greyhound racing pursuant to the Arkansas Horse Racing Law, § 23-110-101 et seq., or the Arkansas Greyhound Racing Law, § 23-111-101 et seq., as the case may be.

(2)(A)(i) The franchise holder may not conduct wagering on electronic games of skill under this chapter unless the question of the wagering on electronic games of skill under this chapter has been submitted to the electors of the city, town, or county in which the franchise holder’s racetrack park site is located and where the wagering on electronic games of skill is to be conducted, at any special or general election, and a majority of the electors voting on the question have approved at the election wagering on electronic games of skill under this chapter.

(ii) If the racetrack park is located within the corporate limits of a city or town, the question shall be submitted to the electors of either the city, town, or county in which the racetrack park is located, as requested by the franchise holder, and if the racetrack park is not located within the corporate limits of a city or town, then the question shall be submitted to the electors of the county in which the racetrack park is located.

(B)(i) The governing body of the city, town, or county, as the case may be, shall by ordinance submit the question to the electors if requested by the franchise holder.

(ii) If the franchise holder makes a request for an election, the franchise holder shall present to the governing body evidence of anticipated benefits to economic development, job creation, tourism, and agribusiness which may result, directly or indirectly, from the authorization of wagering on electronic games of skill at the franchise holder’s racetrack park site under this chapter, if approved by the local voters at the election.

(iii) The franchise holder may make requests on one (1) or more occasions, and elections so requested from time to time by the franchise holder may be held during any one (1) or more calendar years as requested from time to time by the franchise holder, but not more than one (1) special election shall be held for such purposes by the same city, town, or county during any particular calendar year.

(iv) The cost incurred by the city, town, or county involved in conducting each special election pursuant to the franchise holder’s request shall be paid by the franchise holder. The election shall be held and conducted under the general election laws of the state, except as otherwise provided in this section.

(C) The ordinance shall set forth the ballot question substantially as follows:

“For wagering on electronic games of skill conducted by _____
[name of franchise holder] on the grounds of its racetrack park site in _____ [city, town, or county] []

Against wagering on electronic games of skill conducted by _____ [name of franchise holder] on the grounds of its racetrack park site in _____ [city, town, or county] []

As authorized by Arkansas Code Section 23-113-201, the question presented is whether or not wagering on electronic games of skill may

be conducted by _____ [name of franchise holder] on the grounds of its racetrack park site in _____ [city, town, or county] under the provisions of Chapter 113 of Title 23 of the Arkansas Code. Vote for or against the question by marking the appropriate box above. 'Electronic games of skill' means games played through any electronic device or machine that afford an opportunity for the exercise of skill or judgment when the outcome is not completely controlled by chance alone."

(D) Notice of the election shall be given by the clerk of the city, town, or county involved by one (1) publication in a newspaper having general circulation within the city, town, or county involved not less than ten (10) calendar days before the election. No other publication or posting of a notice by any other public official shall be required.

(E) The election shall be held no earlier than thirty-one (31) calendar days, and no later than one hundred twenty (120) calendar days, after the effective date of the ordinance in which the election is called by the governing body.

(F)(i) Within thirty (30) calendar days after completion of the tabulation of the votes, the mayor of the city or town or the county judge of the county, as the case may be, shall proclaim the results of the election by issuing a proclamation and publishing it one (1) time in a newspaper having general circulation within the city, town, or county involved.

(ii) The results of the election as stated in the proclamation shall be conclusive unless a suit contesting the proclamation is filed in the circuit court in the county where the election took place within twenty (20) calendar days after the date of publication of the proclamation.

(G) If the wagering on electronic games of skill is approved at any election as provided in this section, that approval shall be final and shall continue in effect thereafter as long as wagering on electronic games of skill at the location involved is authorized by the other provisions of this chapter, other than this section.

(b)(1) In order to conduct wagering on electronic games of skill during a calendar year, the franchise holder must have been licensed by the Arkansas Racing Commission to conduct a live racing meet within the calendar year or the immediately preceding calendar year of either:

(A) Horse racing under the Arkansas Horse Racing Law, § 23-110-101 et seq.; or

(B) Greyhound racing under the Arkansas Greyhound Racing Law, § 23-111-101 et seq.

(2) However, the commission may waive the requirement of subdivision (b)(1) of this section if the license was not issued because of events such as fire, storm, accident or other casualty, epidemic, shortages of horses or greyhounds, war, sabotage, acts of a public enemy, civil disturbances, strikes, labor disputes, work stoppages, or similar events.

(c)(1) Wagering on electronic games of skill conducted by a franchise holder in accordance with this chapter shall be lawful, notwithstanding any laws or parts of laws of the State of Arkansas to the contrary.

(2) However, this chapter is not intended to authorize a lottery or the sale of lottery tickets prohibited by Arkansas Constitution, Article 19, § 14.

(d)(1) In order to constitute an electronic game of skill under this chapter, the game must not be completely controlled by chance alone.

(2) A game is not completely controlled by chance alone if the betting public may attain through the exercise of skill or judgment a better measure of success in playing the game than could be mathematically expected on the basis of pure luck, that is, on the basis of pure random chance alone.

(e) For each electronic game of skill, the commission shall provide by appropriate rule the specifications for establishing that patrons, in the aggregate, exercising some degree of skill or judgment, over the expected lifetime of the electronic game of skill, will obtain a payout of at least eighty-three percent (83%) of the aggregate amounts wagered on the electronic game of skill.

(f)(1) Prior to conducting wagering on an electronic game of skill, the franchise holder shall present to the commission:

(A) A complete description of the game and the electronic device or machine to be utilized in the play of the game, the proposed rules of play, and such further information as the commission determines is necessary or appropriate in order to effectively carry out its regulatory functions in accordance with this chapter; and

(B) Evidence of anticipated economic benefits to the horse racing or greyhound racing industries in Arkansas, including Arkansas horse or greyhound farms and breeding operations and related agribusinesses, which may result, directly or indirectly, from the authorization of wagering on the electronic game of skill.

(2)(A) Within sixty (60) calendar days after the submission of the information required by subdivision (f)(1) of this section, the commission shall make a finding as to whether:

(i) The game and electronic device or machine constitutes an electronic game of skill authorized by this chapter; and

(ii) Economic benefits to the horse racing or greyhound racing industries in Arkansas, including Arkansas horse or greyhound farms and breeding operations and related agribusinesses, may result, directly or indirectly, from the authorization of wagering on the electronic game of skill.

(B) The finding shall further either approve the proposed rules of play or recommend modifications as the commission determines are necessary in the public interest in carrying out its regulatory functions in accordance with this chapter.

(3) The franchise holder may commence conducting wagering on the electronic game of skill subject to the other provisions of this chapter and other applicable rules of the commission adopted pursuant to this chapter if:

(A) The finding concludes that:

(i) Economic benefits to the horse racing or greyhound racing industries in Arkansas, including Arkansas horse or greyhound

farms and breeding operations and related agribusinesses, may result, directly or indirectly, from the authorization of wagering on the electronic game of skill; and

(ii) The game and electronic device or machine constitutes an electronic game of skill authorized by this chapter; and

(B) The commission approves the rules of play or, if applicable, the franchise holder incorporates the changes recommended by the commission into the final rules of play.

(4) If the finding concludes that the game and electronic device or machine does not constitute an electronic game of skill authorized by this chapter, recommends changes in the proposed rules of play, or concludes that neither direct nor indirect economic benefits to the horse racing or greyhound racing industries in Arkansas, including Arkansas horse or greyhound farms and breeding operations and related agribusinesses, will result from the authorization of wagering on the electronic game of skill, the commission shall provide the franchise holder with the opportunity for a hearing by the commission before the finding is made final by the commission.

(g) Wagers on electronic games of skill may be made only by individuals physically present at the location on the grounds of the franchise holder's authorized racetrack park site as set forth in subsection (a) of this section where electronic games of skill are located and being operated in accordance with this chapter.

(h) No individual under twenty-one (21) years of age shall be intentionally allowed to place wagers on electronic games of skill, and the commission shall provide by rule or regulation appropriate supervisory procedures for franchise holders to follow in order to safeguard against individuals under twenty-one (21) years of age placing wagers on electronic games of skill.

History. Acts 2005, No. 1151, § 1; deleted "or regulation" following "rule" in 2019, No. 315, § 2836. (e).

Amendments. The 2019 amendment

SUBCHAPTER 3 — ARKANSAS RACING COMMISSION

SECTION.

23-113-302. Powers and duties.

23-113-302. Powers and duties.

(a) In addition to all other duties, powers, and responsibilities conferred upon it by other laws of this state, the Arkansas Racing Commission shall exercise the duties, powers, and responsibilities over electronic games of skill and wagering on the electronic games of skill as authorized in this chapter, and without necessarily being limited to the following enumeration, but subject to the other provisions of this chapter, the commission shall:

(1) Regulate the specific games, devices, machines, and equipment played and utilized in connection with wagering on electronic games of

skill and the rules of play and methods of operation thereof as contemplated by this chapter, as well as appropriate security and surveillance systems, in order to safeguard fairness and integrity in the conduct and operation of electronic games of skill and wagering on the electronic games of skill;

(2) Regulate the specific times of operation and specific areas on the premises of the franchise holder's racetrack park site where wagering on electronic games of skill may be conducted;

(3) Prescribe the procedures for issuing licenses to employees of the franchise holder conducting electronic games of skill and wagering on the electronic games of skill, including, without limitation, the information to be submitted by the individuals in connection with their background, employment, experience, and character, as reasonably necessary to determine the individuals' qualifications and suitability for the position;

(4) Prescribe the procedures for issuing licenses to persons supplying electronic games of skill to the franchise holder, including, without limitation, the information to be submitted by the persons in connection with their background, experience, character, business activities, and financial affairs, as reasonably necessary to determine the persons' qualifications and suitability for supplying electronic games of skill to franchise holders for use in accordance with this chapter;

(5) Have authority to enter upon the premises where electronic games of skill are being operated and to observe the conduct of wagering thereon; and

(6) Take such other action not inconsistent with law as the commission may deem necessary or desirable in order to supervise and regulate and to effectively control in the public interest the operation of electronic games of skill and conduct of wagering thereon as authorized by this chapter.

(b) The commission may promulgate, revise, amend, and repeal rules and orders, consistent with the policy, objects, and purposes of this chapter, as it reasonably deems necessary or desirable in the public interest in carrying out the provisions of this chapter.

History. Acts 2005, No. 1151, § 1; deleted "regulations" following "rules" in 2019, No. 315, § 2837. (b).

Amendments. The 2019 amendment

SUBCHAPTER 4 — CONTRIBUTION TO PURSES AND PROMOTION OF ARKANSAS THOROUGHBRED AND GREYHOUND BREEDING ACTIVITIES

SECTION.

23-113-401. Contribution to purses and promotion of Arkansas

thoroughbred and greyhound breeding activities.

23-113-401. Contribution to purses and promotion of Arkansas thoroughbred and greyhound breeding activities.

(a) An amount equal to fourteen percent (14%) of the net wagering revenues from electronic games of skill shall be set aside by the franchise holder in a separate account and used only for purses for live horse racing or live greyhound racing conducted by the franchise holder, as the case may be.

(b) With respect to a franchise holder operating a franchise to conduct horse racing, an amount equal to one percent (1%) of the net wagering revenues from electronic games of skill conducted by the horse racing franchise holder shall be paid by the franchise holder to the Arkansas Racing Commission for deposit into the Arkansas Racing Commission Purse and Awards Fund to be used for purse supplements, breeders' awards, owners' awards, and stallion awards as provided in § 23-110-409 in order to promote and encourage thoroughbred horse breeding activities in Arkansas.

(c) With respect to a franchise holder operating a franchise to conduct greyhound racing, an amount equal to one percent (1%) of the net wagering revenues from electronic games of skill conducted by the greyhound racing franchise holder shall be paid by the franchise holder to the commission to be used for breeders' awards as provided in the commission's rules governing greyhound racing in Arkansas in order to promote and encourage greyhound breeding activities in Arkansas.

(d)(1) The dedication of net wagering revenues from electronic games of skill to purses and breeding activities as set forth in this section shall not be subject to any contract or agreement between the franchise holder and any organization representing horsemen or greyhound owners or trainers, to the end that any such contractual obligations for the use of moneys for purses shall not apply to the funds dedicated to purses and breeding activities as set forth in this section.

(2) The moneys dedicated to purses and breeding activities as set forth in this section are intended to be in addition to any such contractual purse obligations affecting moneys other than the amounts dedicated to purses and breeding activities as set forth in this section, as well as in addition to amounts required to be used for purses and breeding activities under applicable provisions of the Arkansas Horse Racing Law, § 23-110-101 et seq., and the Arkansas Greyhound Racing Law, § 23-111-101 et seq., as the case may be.

(e) The commission shall have jurisdiction to check and verify compliance by the franchise holder with the provisions of this section and shall make periodic determinations as to compliance under rules adopted by the commission.

History. Acts 2005, No. 1151, § 1; deleted "and regulations" following "rules" 2019, No. 315, §§ 2838, 2839. in (c) and (e).

Amendments. The 2019 amendment

SUBCHAPTER 5 — PRIVILEGE FEES

SECTION.

23-113-501. Privilege fees.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

23-113-501. Privilege fees.

(a) Franchise holders conducting wagering on electronic games of skill under this chapter shall pay the following fees for the privilege of conducting the wagering:

(1) An amount equal to eighteen percent (18%) of the net wagering revenues from electronic games of skill shall be paid by the franchise holder to the Secretary of the Department of Finance and Administration for disposition under § 23-113-604;

(2) An amount equal to one-half of one percent (0.5%) of the net wagering revenues from electronic games of skill shall be paid by the franchise holder to the county in which the franchise holder is operating the electronic games of skill; and

(3) An amount equal to one and one-half percent (1.5%) of the net wagering revenues from electronic games of skill shall be paid by the franchise holder to the city or town in which the franchise holder is operating the electronic games of skill.

(b) The privilege fees shall be paid on a monthly basis pursuant to rules and procedures adopted by the secretary. It shall be the duty of a franchise holder on or before the twentieth day of each month to deliver to the secretary upon forms prescribed and furnished by the secretary a return under oath showing the total net wagering revenues from electronic games of skill during the preceding calendar month.

(c) The privilege fees levied by this section are in lieu of any state or local gross receipts, sales, or other similar taxes, and to this end the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., shall not be applicable to gross receipts derived by franchise holders from wagering on electronic games of skill.

(d) The privilege fee payable to the secretary under subdivision (a)(1) of this section shall be administered by the secretary pursuant to the

Arkansas Tax Procedure Act, § 26-18-101 et seq. However, regulatory authority over licensing and other matters under this chapter not relating to the administration, payment, and collection of the privilege fee shall remain with the Arkansas Racing Commission.

History. Acts 2005, No. 1151, § 1; 2019, No. 910, § 3518.

Amendments. The 2019 amendment substituted “Secretary of the Department of Finance and Administration” for “Director of the Department of Finance and Administration” in (a)(1).

SUBCHAPTER 6 — MISCELLANEOUS

SECTION.

23-113-601. Duty to maintain records.

23-113-604. Disposition of privilege fees, license fees, etc.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

23-113-601. Duty to maintain records.

A franchise holder operating electronic games of skill and conducting wagering thereon under this chapter shall keep a complete set of books and records as necessary to show fully the activities and transactions of the franchise holder with respect to the operations and wagering conducted in accordance with this chapter, and the Arkansas Racing Commission shall have reasonable access to the books and records in order to verify compliance with the provisions of this chapter and the rules of the commission.

History. Acts 2005, No. 1151, § 1; 2019, No. 315, § 2840.

deleted “and regulations” following “rules” in the text.

Amendments. The 2019 amendment

23-113-604. Disposition of privilege fees, license fees, etc.

(a) All privilege fees received by the Secretary of the Department of Finance and Administration under this chapter for the benefit of the state shall be deposited into the State Treasury as general revenues.

(b) All permit or license fees, penalties, and fines received by the Arkansas Racing Commission under this chapter shall be deposited into the State Treasury as general revenues.

History. Acts 2005, No. 1151, § 1; 2019, No. 910, § 3519.

Amendments. The 2019 amendment substituted “Secretary of the Department of Finance and Administration” for “Director of the Department of Finance and Administration” in (a).

CHAPTER 114

CHARITABLE BINGO AND RAFFLES ENABLING ACT

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ADMINISTRATION.
3. LICENSING.
4. OPERATION OF GAMES OF BINGO AND RAFFLES.
6. EXCISE TAX.
7. ENFORCEMENT.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

23-114-102. Definitions.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

23-114-102. Definitions.

As used in this chapter:

(1)(A) “Authorized organization” means an organization eligible for a license to conduct games of bingo and raffles that is a nonprofit tax-exempt religious, educational, veterans, fraternal, service, civic, medical, volunteer rescue service, volunteer firefighters organization, or volunteer police organization that has been in continuing existence as a nonprofit tax-exempt organization in this state for a period of not less than five (5) years immediately prior to conducting the game of bingo or raffles.

(B) A nonprofit tax-exempt instrumentality of the United States Government is a service agency for the purpose of this subdivision (1); (2)(A) "Bingo equipment" means equipment and supplies used, made, or sold for the purpose of use in bingo.

(B) "Bingo equipment" includes:

(i) A machine or other device from which balls or other items are withdrawn to determine the letters and numbers or other symbols to be called;

(ii) A bingo face;

(iii) A bingo ball; and

(iv) Any other device commonly used in the direct operation of a bingo game.

(C) "Bingo equipment" is not intended and shall not be construed to permit the participants to play the game through:

(i) Any electronic device or machine; or

(ii) A pull-tab bingo ticket.

(D) "Bingo equipment" does not include:

(i) A bingo game set commonly manufactured and sold as a child's game for a retail price of twenty dollars (\$20.00) or less, unless the set or a part of the set is used in a game of bingo subject to regulation under this chapter; or

(ii) A commonly available component part of bingo equipment such as a light bulb or fuse;

(3) "Bingo face" means a disposable flat piece of paper that may be used one (1) time and that cannot be reused after the game in which the bingo face was used has ended. The bingo face is marked off into any number of squares in any arrangement of rows, with each square being designated by number, letter, or combination of numbers and letters, and with one (1) or more squares designated as a "free" space;

(4) "Bingo session" means all activities incidental to the conduct of a series of games of bingo by a licensed authorized organization, beginning when the first game of bingo of a bingo session is commenced by calling the first bingo ball drawn, such session not to exceed five (5) consecutive hours during any one (1) twenty-four-hour calendar day;

(5) "Charitable purpose" means a purpose described by § 23-114-504;

(6) "Department" means the Department of Finance and Administration;

(7) [Repealed.]

(8) "Distributor" means a person or business entity that sells, markets, or otherwise provides bingo equipment to a licensed authorized organization;

(9)(A) "Game of bingo" means a single game of the activity commonly known as "bingo" in which the participants pay a sum of money for the use of one (1) or more bingo faces.

(B) "Game of bingo" includes only a game in which the winner receives a preannounced, fixed-dollar prize and in which the winner is determined by the matching of letters and numbers on a bingo face

imprinted with at least twenty-four (24) numbers, with letters and numbers appearing on objects randomly drawn and announced by a caller, in contemporaneous competition among all players in the game;

(10) “Gross receipts” means the total amount received from the sale of raffle tickets and the sale, rental, transfer, or use of bingo faces and entrance fees charged at premises at which games of bingo or raffles are conducted without any deduction on account of prizes paid, losses, or any other expenses whatsoever;

(11) “Licensed authorized organization” means an authorized organization that holds a license to conduct games of bingo or raffles;

(12) “Manufacturer” means a person or business entity that produces finished bingo equipment from raw materials, supplies, or subparts and that sells, markets, or otherwise provides such equipment to a licensed distributor;

(13) “Person” means any individual, company, partnership, limited liability company, joint venture, joint agreement, association, mutual or otherwise, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other private entity;

(14) “Premises” means the area subject to the direct control of and actual use by a licensed authorized organization to conduct games of bingo. “Premises” includes a location or place;

(15) “Primary business office” means the Arkansas location at which all records relating to the primary purpose of a licensed authorized organization are maintained in the ordinary course of business;

(16)(A) “Raffle” means the selling of tickets to win a prize awarded through a random drawing.

(B) “Raffle” does not include any game played through the use of a machine or electronic device; and

(17) “Responsible person” means the person or persons within a licensed authorized organization that are responsible for organizing, conducting, and otherwise administering the licensed authorized organization’s raffles or bingo sessions.

History. Acts 2007, No. 388, § 1; 2009, No. 499, § 1; 2019, No. 391, § 16; 2019, No. 910, § 3520. by No. 391 substituted “through” for “though” in (16)(A).

Amendments. The 2019 amendment repealed the definition for “Director”.

SUBCHAPTER 2 — ADMINISTRATION

SECTION.

23-114-201. Control and supervision of games of bingo and raffles.

23-114-202. Approval of bingo faces and raffle tickets.

SECTION.

23-114-203. Rulemaking authority.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

23-114-201. Control and supervision of games of bingo and raffles.

(a) The Secretary of the Department of Finance and Administration shall administer this chapter under the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(b) The secretary has authority over all games of bingo and raffles conducted in this state so that games of bingo and raffles are fairly conducted and the proceeds derived from games of bingo and raffles are used only for an authorized purpose.

History. Acts 2007, No. 388, § 1; 2009, No. 499, § 2; 2019, No. 910, § 3521.

Amendments. The 2019 amendment substituted “Secretary of the Department

of Finance and Administration” for “Director of the Department of Finance and Administration” in (a); and substituted “secretary” for “director” in (b).

23-114-202. Approval of bingo faces and raffle tickets.

(a) The Secretary of the Department of Finance and Administration by rule shall provide for the form of bingo faces and raffle tickets used in the State of Arkansas.

(b)(1) All bingo faces must be purchased by the licensed authorized organization from a distributor licensed under this chapter.

(2) Only one (1) game shall be played on each bingo face.

(c)(1) All bingo faces and raffle tickets shall be preprinted on paper or plastic.

(2) Electronic devices, machines, or facsimiles shall not be used as bingo faces, raffle tickets, or otherwise, by participants of games of bingo or raffles conducted under this chapter.

(d) All bingo faces and raffle tickets shall be sequentially numbered at the time of printing.

History. Acts 2007, No. 388, § 1; 2009, No. 499, § 3; 2019, No. 910, § 3522.

Amendments. The 2019 amendment substituted “Secretary of the Department

of Finance and Administration” for “Director of the Department of Finance and Administration” in (a).

23-114-203. Rulemaking authority.

The Secretary of the Department of Finance and Administration may adopt rules to aid in the enforcement and administration of this chapter.

History. Acts 2007, No. 388, § 1; 2019, No. 910, § 3523.

Amendments. The 2019 amendment substituted “Secretary of the Department

of Finance and Administration” for “Director of the Department of Finance and Administration”.

SUBCHAPTER 3 — LICENSING

SECTION.

23-114-303. License application — Authorized organizations.

23-114-304. License application — Dis-

tributors and manufacturers.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

23-114-303. License application — Authorized organizations.

(a) An applicant for an authorized organization license shall file a written verified application with the Department of Finance and Administration on a form prescribed by the department.

(b) The license application shall include:

(1) The name and address of the applicant;

(2) A designation and address of the premises intended to be used for a raffle or bingo session;

(3) The name and address of the person or persons within the authorized organization who will be responsible for organizing, conducting, and otherwise administering the raffle or bingo sessions;

(4) If the premises upon which a raffle or bingo session will be conducted has been leased by the authorized organization, a copy of the lease agreement; and

(5) A statement that the applicant complies with the conditions for eligibility for the license.

(c) The responsible person within an authorized organization shall meet the following requirements:

(1) The responsible person shall not have been found guilty of or pleaded guilty or no contest to:

(A) Any felony by any court in the State of Arkansas; or

(B) Any similar offense by a court in another state or of any similar offense by a military or federal court;

(2)(A) In order to determine a responsible person's suitability to organize, conduct, and administer raffles and bingo sessions, the Secretary of the Department of Finance and Administration may require that the responsible person be fingerprinted and the fingerprints forwarded for a criminal background check through the Division of Arkansas State Police.

(B) After the completion of the criminal background check through the division, the fingerprints shall be forwarded by the division to the Federal Bureau of Investigation for a national criminal history record check; and

(3) The responsible person shall sign a release that allows the division to release:

(A) An Arkansas noncriminal justice background check to the department; and

(B) A fingerprint card of the applicant to the Federal Bureau of Investigation to allow a federal fingerprint-based background check to be performed.

(d)(1) Before the renewal of an annual license, the licensed authorized organization shall report the following information:

(A) The amount of the total gross receipts derived from games of bingo and raffles;

(B) The net proceeds derived from games of bingo and raffles;

(C) The use to which the proceeds have been or are to be applied; and

(D) If requested by the secretary, a list of expenses paid or incurred.

(2) A licensed authorized organization shall maintain records to substantiate the contents of the report required by this subsection.

History. Acts 2007, No. 388, § 1; 2009, No. 164, §§ 17, 18; 2019, No. 910, §§ 3524, 3525.

Amendments. The 2019 amendment substituted "Secretary of the Department of Finance and Administration" for "Direc-

tor of the Department of Finance and Administration" in (c)(2)(A); and substituted "Division of Arkansas State Police" for "Department of Arkansas State Police" in (c)(2)(A), (c)(2)(B), and the introductory language of (c)(3).

23-114-304. License application — Distributors and manufacturers.

(a) An applicant for a distributor license or a manufacturer license shall file a written verified application with the Department of Finance and Administration on a form prescribed by the department.

(b) The license application shall include:

(1) The name, address, and federal employer identification number of the applicant;

- (2) The names and positions of the applicant's officers;
- (3) The name and address of the person or persons who are responsible for the applicant's sales of bingo equipment; and
- (4) A statement that the applicant complies with the conditions for eligibility for the license.

(c) The person or persons who are responsible for the applicant's sales of bingo equipment shall meet the following requirements:

- (1) The person or persons shall not have been found guilty of or pleaded guilty or no contest to:

- (A) Any felony by any court in the State of Arkansas; or

- (B) Any similar offense by a court in another state or of any similar offense by a military or federal court;

- (2)(A) In order to determine the person's or persons' suitability to be involved in the sale of bingo equipment, the Secretary of the Department of Finance and Administration may require that the person or persons be fingerprinted and the fingerprints forwarded for a criminal background check through the division.

- (B) After the completion of the criminal background check through the division, the fingerprints shall be forwarded by the division to the Federal Bureau of Investigation for a national criminal history record check; and

- (3) The person or persons responsible for an applicant's sales of bingo equipment shall sign a release that allows the division to release the following:

- (A) An Arkansas noncriminal justice background check to the department; and

- (B) A fingerprint card of the applicant to the Federal Bureau of Investigation to allow a federal fingerprint-based background check to be performed.

History. Acts 2007, No. 388, § 1; 2019, No. 910, §§ 3526, 3527.

Amendments. The 2019 amendment substituted "Secretary of the Department of Finance and Administration" for "Direc-

tor of the Department of Finance and Administration" in (c)(2)(A); and substituted "Division of Arkansas State Police" for "Department of Arkansas State Police" throughout (c).

SUBCHAPTER 4 — OPERATION OF GAMES OF BINGO AND RAFFLES

SECTION.

23-114-405. Raffle and bingo records.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and

operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the

fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

23-114-405. Raffle and bingo records.

(a)(1) A licensed authorized organization shall provide to the Secretary of the Department of Finance and Administration at the time of application for license the address of its primary business office.

(2) If the licensed authorized organization maintains its raffle and bingo records at a location other than the primary business office, the licensed authorized organization shall provide the address of the location where the records are maintained.

(b) Bingo and raffle records shall be maintained in Arkansas in accordance with generally accepted accounting practices.

History. Acts 2007, No. 388, § 1; 2009, No. 499, § 7; 2019, No. 910, § 3528. **Amendments.** The 2019 amendment substituted “Secretary of the Department of Finance and Administration” for “Director of the Department of Finance and Administration” in (a)(1).

SUBCHAPTER 6 — EXCISE TAX

SECTION.	SECTION.
23-114-602. Payment and reporting of tax.	23-114-603. Information to be reported.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

23-114-602. Payment and reporting of tax.

(a) The excise tax levied under this subchapter is due and payable by distributors that sold bingo faces to licensed authorized organizations in this state. The tax shall be reported and paid to the Department of Finance and Administration monthly on or before the fifteenth day of the month following the month of sale.

(b) The report shall be filed under oath on forms prescribed by the Secretary of the Department of Finance and Administration.

(c) The secretary shall adopt any rules necessary for the proper reporting and payment of the tax.

History. Acts 2007, No. 388, § 1; 2009, No. 499, § 10; 2019, No. 910, § 3529.

Amendments. The 2019 amendment substituted “Secretary of the Department of Finance and Administration” for “Director of the Department of Finance and Administration” in (b); and substituted “secretary” for “director” in (c).

23-114-603. Information to be reported.

(a) The excise tax report required under § 23-114-602 shall include the following information:

(1) The total number of bingo faces sold to all licensed authorized organizations in this state; and

(2) Any other information that the Secretary of the Department of Finance and Administration determines is necessary to properly administer the excise tax levied by this subchapter.

(b) A taxpayer shall maintain records to substantiate the contents of each report.

History. Acts 2007, No. 388, § 1; 2009, No. 499, § 10; 2019, No. 910, § 3530.

Amendments. The 2019 amendment substituted “Secretary of the Department of Finance and Administration” for “Director of the Department of Finance and Administration” in (a)(2).

SUBCHAPTER 7 — ENFORCEMENT

SECTION.
23-114-704. Injunction.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

23-114-704. Injunction.

(a) If the Department of Finance and Administration has reason to believe that this chapter has been violated, the Secretary of the

Department of Finance and Administration may petition a court for injunctive relief to restrain the violation.

(b)(1) Venue for an action seeking injunctive relief against a licensed distributor or a licensed manufacturer is in Pulaski County, Arkansas.

(2) Venue for an action seeking injunctive relief against a licensed authorized organization is in the county where the licensed authorized organization resides.

(c) If the court finds that this chapter has been violated, the court shall restrain the violation by issuing:

- (1) A temporary restraining order;
- (2) After due notice and hearing, a temporary injunction; and
- (3) After a final trial, a permanent injunction.

History. Acts 2007, No. 388, § 1; 2009, No. 164, § 19; 2009, No. 499, § 11; 2019, No. 910, § 3531.

substituted “Secretary of the Department of Finance and Administration” for “Director of the Department of Finance and Administration” in (a).

Amendments. The 2019 amendment

CHAPTER 115

ARKANSAS SCHOLARSHIP LOTTERY ACT

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. OFFICE OF THE ARKANSAS LOTTERY.
- 3. EMPLOYEES OF OFFICE OF THE ARKANSAS LOTTERY.
- 4. OPERATION OF LOTTERY.
- 5. VENDORS.
- 6. RETAILERS.
- 7. PROCUREMENTS.
- 8. LOTTERY PROCEEDS.
- 9. PENALTIES.
- 10. DEBTORS OWING MONEY TO THE STATE.
- 11. ARKANSAS LOTTERY LEGISLATIVE OVERSIGHT.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 23-115-101. Short title.
- 23-115-102. Legislative intent.

SECTION.

- 23-115-103. Definitions.
- 23-115-104. Fiscal impact statement.

Effective Dates. Acts 2015, No. 218, § 34: Feb. 26, 2015. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the stability of the Arkansas Scholarship Lottery is critical to the success of the Arkansas Academic Challenge Scholarship Program; that changes to the operational structure of the lottery are needed to improve the creditability and function of the lottery; and that this act is

immediately necessary to ensure that the transition of lottery administration is as undistruptive as possible. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Gov-

ernor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2017, No. 613, § 7: Mar. 23, 2017. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this state is in need of a more educated and skilled workforce; that the Arkansas Workforce Challenge Scholarships available under this act will allow more Arkansans to pursue higher education in order to obtain a skill or better education that will lead to employment in a high-needs occupation in Arkansas; and that this act is immediately necessary to allow the funding to be in place so that Arkansas Workforce Challenge Scholarships can be awarded to Arkansans as soon as possible. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Gov-

ernor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

23-115-101. Short title.

This chapter shall be known and may be cited as the “Arkansas Scholarship Lottery Act”.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2015, No. 218, § 25.

Amendments. The 2015 amendment made no changes to this section.

23-115-102. Legislative intent.

It is found and declared by the General Assembly that:

(1) Net proceeds of lotteries conducted under this chapter shall be used to:

(A) Fund and provide for scholarships and grants to citizens of the State of Arkansas enrolled in public and private nonprofit two-year and four-year colleges and universities located within the state; and

(B) Supplement, not supplant, nonlottery educational resources;

(2) Lotteries shall be operated and managed in a manner that:

(A) Provides continuing entertainment to the public;

(B) Maximizes revenues for scholarships; and

(C) Ensures that the lotteries are operated with integrity, dignity, and adequate internal controls and free of political influence; and

(3) The Office of the Arkansas Lottery shall be accountable to the General Assembly and to the public through a system of audits and reports.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2015, No. 218, § 25.

Amendments. The 2015 amendment inserted “for scholarships” in (2)(B); and

substituted “Office of the Arkansas Lottery” for “Arkansas Lottery Commission” in (3).

23-115-103. Definitions.

As used in this chapter:

(1) “Administrative expenses” means operating expenses, excluding amounts set aside for prizes, regardless of whether the prizes are claimed, and excluding amounts held as a fidelity fund under § 23-115-603;

(2) “Administrative order” means the final disposition of the Office of the Arkansas Lottery in any matter other than a claim in contract or in tort, including without limitation licensing, in which the office is required by law to make its determination after notice and a hearing;

(3)(A) “Casino gambling” means a location or business for the purposes of conducting illegal gambling activities, including without limitation activities under § 5-66-101 et seq. that are not authorized under this chapter.

(B) “Casino gambling” does not include the sale and purchase of tickets or shares;

(4)(A) “Compensation” means any money or anything of value received or to be received as a claim for future services, whether in the form of a retainer, fee, salary, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, or any other form of recompense or any combination thereof.

(B) “Compensation” includes without limitation a payment made under obligation for services or other value received.

(C) Subdivisions (4)(A) and (B) of this section do not apply to “compensation” as used in § 23-115-304;

(5) “Female-owned business” means a business:

(A) Whose management and daily business operations are under the control of one (1) or more females; and

(B) Either:

(i) Individually owned by a female who reports as her personal income for Arkansas income tax purposes the income of the business;

(ii) Which is a partnership in which a majority of the ownership interest is owned by one (1) or more females who report as their personal income for Arkansas income tax purposes more than fifty percent (50%) of the income of the partnership; or

(iii) Which is a corporation organized under the laws of this state in which a majority of the common stock is owned by one (1) or more females who report as their personal income for Arkansas income tax purposes more than fifty percent (50%) of the distributed earnings of the corporation;

(6) "Fiscal impact statement" means a realistic written statement of the:

(A) Purpose of a proposed law or proposed amendment to a law under this chapter; and

(B) Estimated financial cost to the office, the lottery, and this state of implementing or complying with the proposed law or proposed rule;

(7) "Gift" means any payment, entertainment, advance, services, or anything of value, unless consideration of equal or greater value has been given therefor;

(8) "Immediate family" means the father, mother, sister, brother, husband, wife, child, grandmother, grandfather, grandchild, father-in-law, mother-in-law, sister-in-law, brother-in-law, daughter-in-law, son-in-law, stepchild, grandmother-in-law, grandfather-in-law, step-grandchild, or any individual acting as parent or guardian;

(9) "Incompetence" means:

(A) Gross ignorance of official duties;

(B) Gross carelessness in the discharge of official duties; or

(C) Inability or unfitness to discharge promptly and properly official duties because of a serious physical or mental defect that did not exist at the time of the person's appointment;

(10) "License" means authorization granted by the office to an individual to operate as a retailer, including without limitation the execution of a contract between the office and the individual relating to obligations and terms for operating as a retailer;

(11) "Lobbying" means communicating directly or soliciting others to communicate with the Director of the Office of the Arkansas Lottery, the Secretary of the Department of Finance and Administration, any employee of the office, or a member of the Legislative Council with the purpose of influencing the actions of the office or the Legislative Council;

(12) "Local government" means:

(A) A county;

(B) A city of the first class or a city of the second class;

(C) An incorporated town; or

(D) Any other district or political subdivision or any board, commission, or agency of the political subdivisions under subdivisions (12)(A)-(C) of this section;

(13)(A) "Lottery" means a game of chance approved by the office and operated under this chapter.

(B) "Lottery" includes without limitation:

(i) An instant ticket;

(ii) A draw game;

(iii) Participation in a multistate or multisovereign game; and

(iv) A raffle.

(C) "Lottery" does not include:

(i) Casino gambling;

(ii) A video lottery;

(iii) Pari-mutuel wagering on horse racing or greyhound racing governed by the Arkansas Horse Racing Law, § 23-110-101 et seq., or

the Arkansas Greyhound Racing Law, § 23-111-101 et seq., whether the pari-mutuel wagering is on live racing, simulcast racing, or races conducted in the past and rebroadcast by electronic means;

(iv) Wagering on electronic games of skill under the Local Option Horse Racing and Greyhound Racing Electronic Games of Skill Act, § 23-113-101 et seq.; or

(v) Conducting or participating in charitable bingo and raffles under the Charitable Bingo and Raffles Enabling Act, § 23-114-101 et seq.;

(14) "Lottery proceeds" means all revenue derived from the sale of tickets or shares and all other moneys derived from or in connection with the operation of a lottery, including without limitation fees, offsets, reimbursements, insurance proceeds, damages, and liquidated damages collected or imposed by the office under this chapter;

(15)(A) "Major procurement contract" means a contract for a gaming product or service costing more than seventy-five thousand dollars (\$75,000), including without limitation:

- (i) A major advertising contract;
- (ii) An annuity contract;
- (iii) A prize payment agreement;
- (iv) A consulting service;
- (v) Lottery equipment;
- (vi) Tickets; and
- (vii) Any other product and service unique to lotteries.

(B) "Major procurement contract" does not include a material, supply, equipment, or service common to the ordinary operations of the office.

(C) When the cost of a proposed contract for a gaming product or service is to be paid, in whole or in part, on a contingent basis, the office shall estimate the value of the proposed contract to determine whether it is a major procurement contract;

(16) "Member of a minority" means a lawful permanent resident of this state who is:

- (A) African American;
- (B) Hispanic American;
- (C) American Indian;
- (D) Asian American; or
- (E) Pacific Islander American;

(17) "Minority-owned business" means a business that is owned by:

(A) An individual who is a member of a minority who reports as his or her personal income for Arkansas income tax purposes the income of the business;

(B) A partnership in which a majority of the ownership interest is owned by one (1) or more members of a minority who report as their personal income for Arkansas income tax purposes more than fifty percent (50%) of the income of the partnership; or

(C) A corporation organized under the laws of this state in which a majority of the common stock is owned by one (1) or more members of

a minority who report as their personal income for Arkansas income tax purposes more than fifty percent (50%) of the distributed earnings of the corporation;

(18) "Multidraw screen-based lottery game" means a lottery game that:

(A) Is played in real time at regular intervals throughout a single day; and

(B) Uses a video screen or monitor to display lottery game information or lottery game results for players;

(19)(A) "Multistate or multisoovereign lottery" and "multistate or multisoovereign game" mean a lottery or game:

(i) Provided by an association or group of state-operated or sovereign-operated lotteries that is:

(a) Organized for the purpose of government benefit; and

(b) Wholly owned and operated by the member lotteries under a mutual agreement, contract, or compact; and

(ii) Operated pursuant to the terms of the association's or group's rules governing the operation and the payment of prizes of the game.

(B) "Multistate or multisovereign lottery" and "multistate or multisovereign game" do not include a lottery prohibited or excluded under this chapter;

(20) "Net proceeds" means lottery proceeds less:

(A) Operating expenses;

(B) The amount of fidelity fund revenue under § 23-115-603 that exceeds five hundred thousand dollars (\$500,000);

(C) The undepreciated amount of capital assets; and

(D) Accruals that will not result in a cash outflow;

(21) "Nonlottery state educational resources" means the same as defined in § 6-85-204;

(22) "Operating expenses" means all costs of doing business, including without limitation:

(A) Prizes, commissions, and other compensation paid to retailers;

(B) Contracts for products or services necessary for the operation of the lottery, including without limitation the execution of major procurement contracts;

(C) Advertising and marketing costs;

(D) Personnel costs;

(E) Capital costs or depreciation of property and equipment;

(F) Funds for compulsive gambling education and treatment;

(G) The payment of sums to the Arkansas State Claims Commission for the reconciliation of valid claims against the office;

(H) Payments for the cost of a state and federal criminal background check;

(I) Payments to the Division of Higher Education to:

(i) Reimburse the division for the costs of administering scholarship awards funded with net proceeds; and

(ii) Replenish nonlottery state educational resources expended by the division on scholarship awards otherwise funded with net proceeds;

(J) Amounts annually transferred to a fidelity fund under § 23-115-603;

(K) Amounts paid to governmental entities for goods or services provided to the office, including without limitation services provided by Arkansas Legislative Audit, the Department of Human Services, and the Department of Finance and Administration;

(L) Withholding and payment of income taxes from lottery prizes; and

(M) Management fees charged by a financial institution to manage a trust account or fund maintained by the division or the office;

(23) "Person" means any individual, corporation, partnership, unincorporated association, or other legal entity;

(24) "Prize promotion" means an action taken to enhance the play for an individual game by one (1) or more of the following:

(A) Funding player affinity programs to promote play of a particular instant or online game;

(B) Enriching the prize for an instant or online game;

(C) Instituting player incentives for an individual game;

(D) Instituting retailer commission incentives for an individual game; or

(E) Funding supplemental advertising expenses related to enhancing the promotion of an individual game;

(25)(A) "Public official" means:

(i) The Governor;

(ii) The Lieutenant Governor;

(iii) The Secretary of State;

(iv) The Treasurer of State;

(v) The Attorney General;

(vi) The Commissioner of State Lands;

(vii) The Auditor of State; or

(viii) A member of the General Assembly.

(B) "Public official" includes an individual during the time between the date he or she is elected and the date he or she takes office;

(26) "Retailer" means a person who sells tickets or shares on behalf of the office under a license;

(27) "Share" means any intangible evidence of participation in a lottery;

(28) "Ticket" means any tangible evidence issued by a lottery to provide participation in a lottery;

(29)(A) "Unclaimed lottery prize money" means a lottery prize expense on the financial books of the office that is released from the expense category when a lottery prize is not claimed within the required claim period for the game during a fiscal year.

(B) With respect to a multistate or multisovereign game, "unclaimed lottery prize money":

(i) Includes any unclaimed prize money returned to the office from a multistate or multisovereign game; and

(ii) Does not include unclaimed prize money from a multistate or multisovereign game that under the agreement of the states partici-

pating in the multistate or multisoovereign game is not returned to the participating states but is applied under the terms of the agreement;

(30)(A) "Vendor" means a person who provides or proposes to provide goods or services to the office under a major procurement contract.

(B) "Vendor" does not include:

- (i) An employee of the office;
- (ii) A retailer; or
- (iii) A state agency or instrumentality.

(C) "Vendor" includes a corporation whose stock is publicly traded and that is the parent company of the contracting party in a major procurement contract;

(31) "Video lottery" means a lottery game that allows a game to be played using an electronic computer and an interactive computer terminal device:

(A) That is equipped with a video screen and keys and a keyboard or other equipment allowing input by an individual player;

(B) Into which the player inserts coins, currency, vouchers, or tokens as consideration in order for play to be available; and

(C) Through which the player may receive free games, coins, tokens, or credits that may be redeemed for cash, annuitized payments over time, a noncash prize, or nothing, as may be determined wholly or predominantly by chance; and

(32) "Super retailer" means a person that sells tickets or shares on behalf of the office under a license and has been authorized by the office to cash winning tickets up to the threshold for federal tax withholding on gambling winnings.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 27; 2010, No. 265, §§ 20-23; 2010, No. 294, §§ 20-23; 2011, No. 20, § 1; 2011, No. 207, § 20; 2011, No. 1173, § 1; 2011, No. 1180, § 2; 2014 (2nd Ex. Sess.), No. 4, § 1; 2014 (2nd Ex. Sess.) No. 8, § 1; 2015, No. 218, § 25; 2015, No. 1258, § 20; 2017, No. 613, § 4; 2019, No. 682, § 1; 2019, No. 910, §§ 2350-2353.

A.C.R.C. Notes. Acts 2015, No. 1258, § 1, provided: "LEGISLATIVE FINDINGS. The General Assembly finds:

"(1) Amendment 92 to the Arkansas Constitution states in part: 'The General Assembly may provide by law for the review by a legislative committee of administrative rules promulgated by a state agency before the administrative rules become effective; and that administrative rules promulgated by a state agency shall not become effective until reviewed and approved by the legislative committee charged by law with the review of administrative rules under subdivision (a)(1) of this section';

"(2) As Amendment 92 does not define the term 'state agency', the General Assembly may establish a definition by law as part of its implementation of Amendment 92;

"(3) The General Assembly at this time wishes to exclude the Arkansas State Game and Fish Commission, the State Highway Commission, the Arkansas State Highway and Transportation Department, and institutions of higher education from the definition of 'state agency' applied to the implementation of Amendment 92; and

"(4) The General Assembly or the Legislative Council reserve the right to amend the definition of 'state agency' in the future to include one (1) or all of the Arkansas State Game and Fish Commission, the State Highway Commission, the Arkansas State Highway and Transportation Department, and institutions of higher education."

Publisher's Notes. Acts 2015, No. 1258, § 20, specifically amended this section as amended by Acts 2015, No. 218.

Amendments. The 2015 amendment by No. 218 substituted “Office of the Arkansas Lottery” or “office” for “Arkansas Lottery Commission” throughout the section; and, in (11), substituted “the Director of the Office of the Arkansas Lottery” for “any member of the Arkansas Lottery Commission,” substituted “Director of the Department of Finance and Administration” for “Director of the Arkansas Lottery Commission,” and substituted “Arkansas Lottery Legislative Oversight Committee” for “Arkansas Lottery Commission Legislative Oversight Committee” twice.

The 2015 amendment by No. 1258 substituted “Legislative Council” for “Arkan-

sas Lottery Legislative Oversight Committee” twice in (11).

The 2017 amendment added (22)(M).

The 2019 amendment by No. 682 added (32).

The 2019 amendment by No. 910 substituted “Secretary of the Department of Finance and Administration” for “Director of the Department of Finance and Administration” in (11); and substituted “Division of Higher Education” for “Department of Higher Education” throughout (22).

23-115-104. Fiscal impact statement.

(a) The author of a bill filed in the House of Representatives or the Senate shall have a fiscal impact statement prepared if the bill:

- (1) Amends this chapter; or
- (2) Will impose a new or increased cost to:
 - (A) The Office of the Arkansas Lottery; or
 - (B) A lottery.

(b) The author of the bill shall file the fiscal impact statement with the chair of the committee to which the bill is referred:

(1) At least three (3) days before the bill may be called up for final action in the committee during a regular session of the General Assembly;

(2) At least three (3) days before the bill may be called up for final action in the committee during a fiscal session of the General Assembly; and

(3) At least one (1) day before the bill may be called up for final action in the committee during an extraordinary session of the General Assembly.

(c)(1) A fiscal impact statement under this section shall be developed by the Bureau of Legislative Research within the guidelines adopted by the Legislative Council.

(2) The Division of Higher Education or the office, as applicable, shall assist in the preparation of the fiscal impact statement.

(d)(1)(A) If a bill requiring a fiscal impact statement under this section is called up for final passage in the House of Representatives or the Senate and a fiscal impact statement has not been provided by the author of the bill or by the committee to which the bill was referred, any member of the House of Representatives or the Senate may object to the bill’s being called up for final passage until a fiscal impact statement is prepared and made available on the desk of each member of the House of Representatives or the Senate at least one (1) day before the bill’s being called up for final passage.

(B) An affirmative vote of two-thirds (2/3) of a quorum present and voting shall override the objection.

(2) If an objection is made without override, the presiding officer of the House of Representatives or the Senate shall cause the bill to be referred to the bureau for the preparation of a fiscal impact statement that shall be filed with the presiding officer of the House of Representatives or the Senate not later than five (5) days from the date of the request.

History. Acts 2011, No. 1173, § 2; 2015, No. 218, § 25; 2015, No. 1258, § 21; 2019, No. 910, § 2354.

A.C.R.C. Notes. Acts 2015, No. 1258, § 1, provided: “LEGISLATIVE FINDINGS. The General Assembly finds:

“(1) Amendment 92 to the Arkansas Constitution states in part: ‘The General Assembly may provide by law for the review by a legislative committee of administrative rules promulgated by a state agency before the administrative rules become effective; and that administrative rules promulgated by a state agency shall not become effective until reviewed and approved by the legislative committee charged by law with the review of administrative rules under subdivision (a)(1) of this section’;

“(2) As Amendment 92 does not define the term ‘state agency’, the General Assembly may establish a definition by law as part of its implementation of Amendment 92;

“(3) The General Assembly at this time wishes to exclude the Arkansas State Game and Fish Commission, the State Highway Commission, the Arkansas State Highway and Transportation Department, and institutions of higher education

from the definition of ‘state agency’ applied to the implementation of Amendment 92; and

“(4) The General Assembly or the Legislative Council reserve the right to amend the definition of ‘state agency’ in the future to include one (1) or all of the Arkansas State Game and Fish Commission, the State Highway Commission, the Arkansas State Highway and Transportation Department, and institutions of higher education.”

Publisher’s Notes. Acts 2015, No. 1258, § 21, specifically amended this section as amended by Acts 2015, No. 218.

Amendments. The 2015 amendment by No. 218 substituted “Office of the Arkansas Lottery” for “Arkansas Lottery Commission” in (a)(2)(A); substituted “Arkansas Lottery Legislative Oversight Committee” for “Arkansas Lottery Commission Legislative Oversight Committee” in (c)(1); and substituted “office” for “commission” in (c)(2).

The 2015 amendment by No. 1258 substituted “Legislative Council” for “Arkansas Lottery Legislative Oversight Committee” in (c)(1).

The 2019 amendment substituted “Division of Higher Education” for “Department of Higher Education” in (c)(2).

SUBCHAPTER 2 — OFFICE OF THE ARKANSAS LOTTERY

SECTION.

- 23-115-201. Office of the Arkansas Lottery — Creation — Venue.
- 23-115-202, 23-115-203. [Repealed.]
- 23-115-204. Lottery Retailer Advisory Board.
- 23-115-205. Office of the Arkansas Lottery powers.
- 23-115-206. Internal controls — Annual audit.
- 23-115-207. Rulemaking.

SECTION.

- 23-115-208. Sovereign immunity.
- 23-115-209. Appealing administrative orders of the Office of the Arkansas Lottery.
- 23-115-210. [Repealed.]
- 23-115-211. Certain sections inapplicable.
- 23-115-212. Duties and responsibilities of internal auditor.

A.C.R.C. Notes. Acts 2015, No. 218, § 1, provided: “Arkansas Lottery Commission abolished — Type 3 transfer to Department of Finance and Administration.

“(a) The Arkansas Lottery Commission, created by § 23-115-201, is abolished and its powers and duties are transferred to the Office of the Arkansas Lottery within the Management Services Division of the Department of Finance and Administration by a type 3 transfer under § 25-2-106.

“(b) For purposes of this act, the Department of Finance and Administration shall be considered a principal department established by Acts 1971, No. 38.”

Acts 2015, No. 218, § 33, provided: “Lobbying or representing vendor or retailer by former Arkansas Lottery Commission member or employee prohibited for two (2) years.

“(a) A former member of the Arkansas Lottery Commission shall not for a period of two (2) years beginning on the date the member’s service on the commission ended:

“(1) Engage in lobbying on any matter related to the operation or conduct of a lottery; or

“(2) Represent a vendor or retailer before the Office of the Arkansas Lottery.

“(b) A former employee of the commission shall not for a period of two (2) years beginning on the date the employee’s employment by the commission ended:

“(1) Engage in lobbying on any matter related to the operation or conduct of a lottery; or

“(2) Represent a vendor or retailer before the office.”

Publisher’s Notes. Acts 2015, No. 218, § 25, substituted “Office of the Arkansas Lottery” for “Arkansas Lottery Commission” in the subchapter heading.

Effective Dates. Acts 2015, No. 218, § 34: Feb. 26, 2015. Emergency clause

provided: “It is found and determined by the General Assembly of the State of Arkansas that the stability of the Arkansas Scholarship Lottery is critical to the success of the Arkansas Academic Challenge Scholarship Program; that changes to the operational structure of the lottery are needed to improve the creditability and function of the lottery; and that this act is immediately necessary to ensure that the transition of lottery administration is as undistruptive as possible. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

23-115-201. Office of the Arkansas Lottery — Creation — Venue.

(a) There is created within the Management Services Division of the Department of Finance and Administration the Office of the Arkansas Lottery to establish and oversee the operation of one (1) or more lotteries under this chapter.

(b) The office is a self-supporting and revenue-raising agency of the state.

(c) The office shall reimburse other governmental entities that provide goods or services to the office.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2015, No. 218, § 25.

Amendments. The 2015 amendment, substituted “Office of the Arkansas Lottery” for “Arkansas Lottery Commission” in the section heading and in (a); inserted

“within the Management Services Division of the Department of Finance and Administration” in (a); and substituted “office” for “commission” throughout (b) and (c).

23-115-202, 23-115-203. [Repealed.]

Publisher’s Notes. These sections, concerning commission members and their duties and qualifications of commission members, were repealed by Acts 2015, No. 218, § 25. The sections were derived from the following sources:

23-115-202. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-203. Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-204. Lottery Retailer Advisory Board.

(a)(1) The Director of the Office of the Arkansas Lottery shall appoint a Lottery Retailer Advisory Board to be composed of ten (10) retailers.

(2) In making appointments to the board, the director may consider a broad spectrum of geographical, racial, gender, and business characteristics of retailers.

(3) The board shall advise the Office of the Arkansas Lottery on retail aspects of lotteries and present the concerns of retailers throughout the state.

(b)(1) Except as provided in subdivision (b)(2) of this section, each member appointed to the board shall serve a term of two (2) years.

(2)(A) Five (5) of the initial appointees shall serve initial terms of one (1) year.

(B) The initial appointees shall draw lots to determine which five (5) members shall serve a one-year term.

(3) A member of the board shall not serve more than six (6) terms.

(c)(1) The board shall provide by rule for its operating procedures.

(2) Members shall serve without compensation or reimbursement of expenses.

(3) The board may report to the office and the Legislative Council in writing at any time.

(4) The director may invite the board to make an oral presentation to the office at any time.

(d) The following shall not be appointed as a member of the board:

(1) A member of the immediate family of the Secretary of the Department of Finance and Administration;

(2) A member of the immediate family of the director; or

(3) A member of the immediate family of an employee of the office.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2015, No. 218, § 25; 2015, No. 1258, § 22; 2019, No. 910, § 3532.

A.C.R.C. Notes. Acts 2015, No. 1258, § 1, provided: “LEGISLATIVE FINDINGS. The General Assembly finds:

“(1) Amendment 92 to the Arkansas Constitution states in part: ‘The General Assembly may provide by law for the review by a legislative committee of administrative rules promulgated by a state agency before the administrative rules become effective; and that administrative rules promulgated by a state agency shall not become effective until reviewed and approved by the legislative committee charged by law with the review of administrative rules under subdivision (a)(1) of this section’;

“(2) As Amendment 92 does not define the term ‘state agency’, the General Assembly may establish a definition by law as part of its implementation of Amendment 92;

“(3) The General Assembly at this time wishes to exclude the Arkansas State Game and Fish Commission, the State Highway Commission, the Arkansas State Highway and Transportation Department, and institutions of higher education from the definition of ‘state agency’ applied to the implementation of Amendment 92; and

“(4) The General Assembly or the Legislative Council reserve the right to amend the definition of ‘state agency’ in the future to include one (1) or all of the Arkansas State Game and Fish Commission, the State Highway Commission, the

Arkansas State Highway and Transportation Department, and institutions of higher education.”

Publisher’s Notes. Acts 2015, No. 1258, § 22, specifically amended this section as amended by Acts 2015, No. 218.

Amendments. The 2015 amendment by No. 218 substituted “Director of the Office of the Arkansas Lottery” for “Chair of the Arkansas Lottery Commission” in (a)(1) and for “chair” in (a)(2); deleted “subject to the approval of a majority of a quorum of the Arkansas Commission” preceding “shall appoint” in (a)(1); substituted “Office of the Arkansas Lottery” for “commission” in (a)(3); in (c)(3), substituted “office” for “commission” and “Arkansas Lottery Legislative Oversight Committee” for “Arkansas Lottery Commission Legislative Oversight Committee”; in (c)(4), substituted “Director of the Office of the Arkansas Lottery” for “commission” and “office at any time” for “commission at any meeting of the commission”; substituted “the Director of the Department of Finance and Administration” for “a member of the commission” in (d)(1); substituted “Director of the Office of the Arkansas Lottery” for “director of the commission” in (d)(2); and substituted “office” for “commission” in (d)(3).

The 2015 amendment by No. 1258 substituted “Legislative Council” for “Arkansas Lottery Legislative Oversight Committee” in (c)(3).

The 2019 amendment substituted “Secretary of the Department of Finance and Administration” for “Director of the Department of Finance and Administration” in (d)(1).

23-115-205. Office of the Arkansas Lottery powers.

(a) The Office of the Arkansas Lottery has all powers necessary or convenient to its usefulness in carrying out this chapter that are not in conflict with the Arkansas Constitution or the United States Constitution, including without limitation the following powers:

(1) To adopt and alter a seal;

(2) To adopt, amend, and repeal rules for the regulation of its affairs and the conduct of its business, to prescribe the duties of officers and employees of the office, and to perform other matters as the office determines;

(3) To bring suits to enforce demands of the state under this chapter;

(4) To procure or to provide insurance;

(5) To hold copyrights, trademarks, and service marks and to enforce the office's rights with respect to those copyrights, trademarks, and service marks;

(6) To initiate, supervise, and administer the operation of lotteries in accordance with this chapter and rules adopted under this chapter;

(7) To enter into written agreements with one (1) or more other states or sovereigns for the operation, participation in marketing, and promotion of multistate or multisovereign games;

(8) To conduct market research as necessary or appropriate;

(9) To acquire or lease real property and make improvements to the real property and acquire by lease or by purchase personal property, including without limitation:

(A) Computers;

(B) Mechanical, electronic, and online equipment and terminals;

(C) Intangible property, including without limitation computer programs, computer systems, and computer software; and

(D) Broadcast equipment;

(10) To administer oaths, take depositions, issue subpoenas, and compel the attendance of witnesses and the production of books, papers, documents, and other evidence relative to any investigation or proceeding conducted by the office;

(11) To employ an internal auditor to perform the duties and responsibilities required under § 23-115-212;

(12) To select and contract with vendors;

(13) To select and license retailers;

(14) To enter into contracts or agreements with state or local law enforcement agencies for the performance of law enforcement, background investigations, and security checks;

(15) To conduct background investigations and, if considered necessary by the Director of the Office of the Arkansas Lottery, credit investigations on each potential vendor and retailer;

(16) To supervise ticket or share validation and lottery drawings;

(17) To inspect at times determined solely by the office the facilities of a vendor or a retailer to determine:

(A) The integrity of the vendor's product or the operations of the retailer; and

(B) Whether the vendor or the retailer is in compliance with its contract or license;

(18) To report any suspected violation of this chapter to the appropriate prosecuting attorney or the Attorney General and to any law enforcement agencies having jurisdiction over the violation;

(19) Upon request, to provide assistance to the Chief Fiscal Officer of the State, the Legislative Auditor, the appropriate prosecuting attorney, the Attorney General, or a law enforcement agency investigating a violation of this chapter;

(20) To enter into contracts of terms and conditions that the office determines;

(21) To establish and maintain banking relationships associated with the maintenance and investment of lottery proceeds, including

without limitation the establishment of checking and savings accounts and trust funds;

(22)(A) To advertise and promote lotteries and scholarships and grants funded by net proceeds.

(B) The office shall seek the advice of the Division of Higher Education when advertising to promote scholarships and grants funded by net proceeds;

(23) To act as a retailer and to establish and operate a sales facility to conduct promotions that involve the sale of tickets or shares and any related merchandise;

(24)(A) To contract with one (1) or more independent testing laboratories to scientifically test and technically evaluate lottery games, lottery terminals, and lottery operating systems.

(B) An independent testing laboratory shall:

(i) Have a national reputation that is demonstrably competent; and

(ii) Be qualified to scientifically test and evaluate all components of a lottery game, lottery terminal, or lottery operating system.

(C) An independent testing laboratory shall not be owned or controlled by a vendor or a retailer;

(25) To withhold state and federal income taxes as required by law; and

(26) To adopt and amend rules necessary to carry out and implement the office's powers and duties, organize and operate the office, regulate the conduct of lotteries in general, and any other matters necessary or desirable for the efficient and effective operation of lotteries for the convenience of the public.

(b) The powers enumerated in subsection (a) of this section:

(1) Are in addition to those powers of the office enumerated elsewhere in this chapter; and

(2) Do not limit or restrict any other powers of the office.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 28; 2010, No. 265, § 24; 2010, No. 294, § 24; 2011, No. 207, § 21; 2015, No. 218, § 25; 2019, No. 910, § 2355.

Amendments. The 2015 amendment substituted "Office of the Arkansas Lottery" for "Commission" in the section heading; substituted "Office of the Arkansas Lottery" for "Arkansas Lottery Commission" and "office" for "commission"

throughout the section; deleted (a)(11)(A) and deleted the (a)(11)(B) designation; substituted "Director of the Office of the Arkansas Lottery" for "commission" in (a)(15); deleted (a)(23) and redesignated the remaining subdivisions accordingly; substituted "the office's" for "its" in (a)(26); and deleted (c).

The 2019 amendment substituted "Division of Higher Education" for "Department of Higher Education" in (a)(22)(B).

23-115-206. Internal controls — Annual audit.

(a) To ensure the financial integrity of lotteries, the Office of the Arkansas Lottery shall:

(1) Establish and maintain effective internal controls over financial reporting, including the monitoring of ongoing activities, and comply

with the Arkansas Constitution and applicable laws, rules, contracts, agreements, and grants;

(2)(A) Establish and maintain effective internal controls to prevent and detect fraud, including without limitation a system of internal audits.

(B) The Director of the Office of the Arkansas Lottery shall:

(i) By July 1, 2015, approve a formal, written three-year audit plan; and

(ii) Annually review the audit plan.

(C) The director shall review and take action to approve or reject a recommendation from the internal auditor to amend the audit plan;

(3) Include in any contract or license with a vendor or retailer for data processing services or other computer services a provision permitting Arkansas Legislative Audit to have access and authority to audit the computer systems of the vendor or retailer;

(4) Notify Arkansas Legislative Audit of all known fraud or suspected fraud or all known or suspected illegal acts involving management or other employees of the office or others with whom the office contracts;

(5) Inform Arkansas Legislative Audit and the Chief Fiscal Officer of the State of any known material violations of the Arkansas Constitution, applicable statutes, rules, contracts, agreements, or grants;

(6) Prepare the financial statements, including the related notes to the financial statements, of the office in accordance with generally accepted accounting principles and in accordance with guidelines and timelines established by the Chief Fiscal Officer of the State to permit incorporation into the state's financial statements and to permit the audit of the state's financial statements and the office's financial statements in a timely manner;

(7) Make all financial records and related information available to Arkansas Legislative Audit, including the identification of significant vendor relationships in which the vendor has the responsibility for program compliance, in accordance with §§ 10-4-416 and 10-4-424;

(8)(A) Submit monthly reports to the Governor and the Legislative Council disclosing the following budgeted and actual information for the reporting period and cumulatively for the fiscal year:

(i) Total lottery revenues;

(ii) Prize disbursements;

(iii) Operating expenses;

(iv) Net assets; and

(v) Administrative expenses.

(B) The director shall submit a comprehensive annual financial report to the Governor and to the Legislative Council by placing the report on the office's website and providing notice of its availability to the Governor and to the Legislative Council.

(C)(i) The comprehensive annual financial report shall comply with Governmental Accounting Standards Board Statement 34 and follow the guidelines of the Certificate of Achievement for Excellence

in Financial Reporting Program of the Government Finance Officers Association.

(ii) The Legislative Council shall identify the statistical data required for compliance with this subdivision (a)(8)(C).

(D) The comprehensive annual financial report shall include without limitation:

(i) Information concerning the director;

(ii) A current organizational chart;

(iii) Information on each type of lottery game offered by the Arkansas Scholarship Lottery, game promotions, or other activities related to games during the fiscal year;

(iv) The annual financial audit report made to the Legislative Joint Auditing Committee;

(v) A statement of revenue, expenses, and changes in net assets for each fiscal year since inception of the Arkansas Scholarship Lottery;

(vi) Separate reports from each component or department of the office or the Arkansas Scholarship Lottery, including without limitation sales, marketing, retailers, gaming operations, players, and security;

(vii) A fiscal year-end report on any information required to be reported by the office on a monthly basis, including without limitation:

(a) Unclaimed lottery prize money under § 23-115-403;

(b) The Scholarship Shortfall Reserve Trust Account under § 23-115-802; and

(c) Minority-owned business and female-owned business participation under § 23-115-401;

(viii) Information concerning the Arkansas Scholarship Lottery's industry standings or rankings;

(ix) Information concerning the scholarships awarded from net lottery proceeds, including without limitation:

(a) Demographic reports from the Division of Higher Education for each full semester during the fiscal year on accessibility to scholarships, award amounts for each approved institution of higher education; and

(b) The division's report to the Legislative Council required by § 6-85-219;

(x) A report from the Lottery Retailer Advisory Board, if a report was received during the fiscal year;

(xi) Where to find information on gambling disorder treatment and education programs;

(xii) Where to find website information on rules, gaming, and frequently asked questions; and

(xiii) Contact information for the Arkansas Scholarship Lottery and key employees of the office;

(9) Maintain weekly or more frequent records of lottery transactions, including without limitation:

(A) The distribution of tickets or shares to retailers;

- (B) Revenues received;
- (C) Claims for lottery prizes;
- (D) Lottery prizes paid;
- (E) Lottery prizes forfeited; and
- (F) Other financial transactions of the office;

(10)(A) Submit to the cochairs of the Legislative Council by April 30 of each year the estimated annual operating budget for the office for the next fiscal year.

(B) At a minimum, the estimated annual operating budget submitted for the Legislative Council's review shall:

(i) Contain an estimate of the net proceeds to be available for scholarships and grants during the succeeding fiscal year;

(ii) Compare the:

(a) Actual revenues and expenditures for the last completed fiscal year;

(b) Budgeted revenues and expenditures for the current fiscal year; and

(c) Estimated revenues and expenditures for the next fiscal year;

(iii) Contain an explanation of increases or decreases in revenues and expenditures shown in the estimated annual operating budget for the next fiscal year compared to the budgeted revenues and expenditures for the current fiscal year;

(iv) Classify all revenues and expenditures by specific purpose instead of "miscellaneous" or "other";

(v) Contain a schedule of the total amounts of regular salaries, extra help compensation, overtime compensation, and personal services matching as defined in § 19-4-521; and

(vi) For each position title authorized under §§ 23-115-305 — 23-115-307, contain a schedule of the annual salary, special allowance, or grade and include:

(a) The total number of persons currently employed;

(b) The number of Caucasian male employees;

(c) The number of Caucasian female employees;

(d) The total number of Caucasian employees;

(e) The number of African-American male employees;

(f) The number of African-American female employees;

(g) The number of other employees who are members of racial minorities; and

(h) The total number of minorities currently employed; and

(11) Adopt the same fiscal year as that used by state government.

(b)(1)(A) Arkansas Legislative Audit shall annually audit the office.

(B) Arkansas Legislative Audit may conduct an investigation or audit or prepare special reports regarding the office or related entities, scholarships, grants, vendors, retailers, or any other transactions or relationships connected or associated with the office or its operations, duties, or functions upon the approval of the Legislative Joint Auditing Committee.

(2) The office shall reimburse Arkansas Legislative Audit at an hourly rate set by the Legislative Joint Auditing Committee for work

performed by Arkansas Legislative Audit relating to any audit, investigation, or special report regarding the office and related entities, scholarships, grants, vendors, retailers, or other related matters.

(3)(A) If the office, the General Assembly, the Legislative Council, or the Legislative Joint Auditing Committee requests additional audits or performance reviews of the fiscal affairs or operations of the office to be conducted by a private certified public accountant or other consultant, the Secretary of the Department of Finance and Administration shall select and contract with appropriate certified public accountants or consultants to provide the services.

(B) The secretary shall contract for the services which shall be paid directly to the contractor by the office.

(C) A copy of any report or management correspondence prepared by the certified public accountants or consultants shall be forwarded to Arkansas Legislative Audit, the secretary, and the Legislative Council.

(4) This chapter does not limit the statutory authority of Arkansas Legislative Audit or the responsibilities of the office or related entities, members of the Lottery Retailer Advisory Board, employees, vendors, retailers, or any other individuals or entities to cooperate with Arkansas Legislative Audit or provide information or records requested by Arkansas Legislative Audit.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2011, No. 207, §§ 22, 23; 2011, No. 1057, §§ 1, 2; 2015, No. 218, § 25; 2015, No. 1258, § 23; 2019, No. 910, §§ 3533, 3534.

A.C.R.C. Notes. Acts 2015, No. 1258, § 1, provided: “LEGISLATIVE FINDINGS. The General Assembly finds:

“(1) Amendment 92 to the Arkansas Constitution states in part: ‘The General Assembly may provide by law for the review by a legislative committee of administrative rules promulgated by a state agency before the administrative rules become effective; and that administrative rules promulgated by a state agency shall not become effective until reviewed and approved by the legislative committee charged by law with the review of administrative rules under subdivision (a)(1) of this section’;

“(2) As Amendment 92 does not define the term ‘state agency’, the General Assembly may establish a definition by law as part of its implementation of Amendment 92;

“(3) The General Assembly at this time wishes to exclude the Arkansas State Game and Fish Commission, the State Highway Commission, the Arkansas State

Highway and Transportation Department, and institutions of higher education from the definition of ‘state agency’ applied to the implementation of Amendment 92; and

“(4) The General Assembly or the Legislative Council reserve the right to amend the definition of ‘state agency’ in the future to include one (1) or all of the Arkansas State Game and Fish Commission, the State Highway Commission, the Arkansas State Highway and Transportation Department, and institutions of higher education.”

Publisher’s Notes. Acts 2015, No. 1258, § 23, specifically amended this section as amended by Acts 2015, No. 218.

Amendments. The 2015 amendment by No. 218 substituted “Office of the Arkansas Lottery” for “Arkansas Lottery Commission” and “office” for “commission” throughout the section; substituted “Arkansas Lottery Legislative Oversight Committee” for “Arkansas Lottery Commission Legislative Oversight Committee” throughout the section; substituted “Director of the Office of the Arkansas Lottery” for “commission” in (a)(2)(B); substituted “2015” for “2011” in (a)(2)(B)(i); substituted “director” for

“commission or a subcommittee of the commission” in (a)(2)(C) and for “commission” in (a)(8)(B); substituted “director” for “commissioners of the Arkansas Lottery Commission” in (a)(8)(D)(i); substituted “by § 6-85-219” for “under § 6-85-219(b)” in (a)(8)(D)(ix)(b); substituted “Director of the Department of Finance and Administration” for “division” in (b)(3)(A) and (B); in (b)(3)(C), deleted “the commission” following “forwarded to” and inserted “the director”; and inserted “retail, advisory” in (b)(4).

The 2015 amendment by No. 1258 substituted “Legislative Council” for “Arkansas

Lottery Legislative Oversight Committee” throughout the section; and substituted “Director of the Office of the Arkansas Lottery” for “director” in (a)(8)(D)(i).

The 2019 amendment substituted “Division of Higher Education” for “Department of Higher Education” in (a) and (b); and substituted “Secretary of the Department of Finance and Administration” for “Director of the Department of Finance and Administration” throughout (b)(3).

23-115-207. Rulemaking.

(a) The Office of the Arkansas Lottery may adopt rules regulating the conduct of lotteries in general, including without limitation rules specifying:

- (1) The types of lotteries to be conducted;
- (2)(A) The sale price of tickets or shares and the manner and method of sale.

(B) [Repealed.]

- (3) The number and amount of prizes;
- (4) The method and location of selecting or validating winning tickets or shares;
- (5) The manner and time of payment of prizes, including without limitation lump-sum payments or installments over a period of years;
- (6)(A) The manner of payment of prizes to the holders of winning tickets or shares.

(B) Winners of five hundred dollars (\$500) or less may claim prizes from any of the following:

- (i) A retailer; or
- (ii) The office.

(C) Winners of more than five hundred dollars (\$500) but a dollar amount less than the threshold for federal tax withholding on gambling winnings may claim prizes from:

- (i) The office; or
- (ii) A super retailer.

(D)(i) Winners of a dollar amount that exceeds the threshold for federal tax withholding on gambling winnings shall claim prizes from the office.

- (ii) The office may establish claim centers throughout the state;

(7) The frequency of lotteries and drawings or selection of winning tickets or shares;

(8) The means of conducting drawings;

(9)(A) The method to be used in selling tickets or shares.

(B) The selling of tickets or shares may include the use of electronic or mechanical devices.

(C) If the office elects to use electronic or mechanical devices to sell tickets or shares, the office shall provide by rule:

(i) Specifications and required features for electronic or mechanical devices that may be used to sell tickets or shares; and

(ii) Procedures and requirements to prevent the use of electronic or mechanical devices by an individual under eighteen (18) years of age.

(D) A retailer who knowingly allows a person under eighteen (18) years of age to purchase a lottery ticket from an electronic or mechanical device is subject to the penalties under § 23-115-901.

(E) The office shall publish a notice on the office's public website that provides the location, including without limitation the street address, of each self-service lottery ticket vending machine in operation in this state;

(10) The manner and amount of compensation to retailers; and

(11) Any other matters necessary, desirable, or convenient toward ensuring the efficient and effective operation of lotteries, the continued entertainment and convenience of the public, and the integrity of the lotteries.

(b) The office may adopt rules requiring the publication on a ticket or share of the odds of winning a particular lottery game.

(c)(1)(A) Except as provided in subdivision (c)(1)(B) of this section, the promulgation of rules under this chapter shall comply with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(B) The office is not required to file rules under § 10-3-309.

(2)(A) The promulgation of rules by the office is exempt from § 10-3-309.

(B) The office shall file its rules with the Legislative Council for review and approval at least thirty (30) days before the expiration of the public comment period.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2011, No. 1192, § 1; 2015, No. 218, § 25; 2015, No. 1258, § 24; 2017, No. 876, § 1; 2019, No. 682, § 2.

A.C.R.C. Notes. Acts 2015, No. 1258, § 1, provided: "LEGISLATIVE FINDINGS. The General Assembly finds:

"(1) Amendment 92 to the Arkansas Constitution states in part: 'The General Assembly may provide by law for the review by a legislative committee of administrative rules promulgated by a state agency before the administrative rules become effective; and that administrative rules promulgated by a state agency shall not become effective until reviewed and approved by the legislative committee charged by law with the review of administrative rules under subdivision (a)(1) of this section';

"(2) As Amendment 92 does not define the term 'state agency', the General As-

sembly may establish a definition by law as part of its implementation of Amendment 92;

"(3) The General Assembly at this time wishes to exclude the Arkansas State Game and Fish Commission, the State Highway Commission, the Arkansas State Highway and Transportation Department, and institutions of higher education from the definition of 'state agency' applied to the implementation of Amendment 92; and

"(4) The General Assembly or the Legislative Council reserve the right to amend the definition of 'state agency' in the future to include one (1) or all of the Arkansas State Game and Fish Commission, the State Highway Commission, the Arkansas State Highway and Transportation Department, and institutions of higher education."

Publisher's Notes. Acts 2015, No.

1258, § 24, specifically amended this section as amended by Acts 2015, No. 218.

Amendments. The 2015 amendment by No. 218 substituted “Office of the Arkansas Lottery” for “Arkansas Lottery Commission” and “office” for “commission” throughout the section; and substituted “Arkansas Lottery Legislative Oversight Committee” for “Arkansas Lottery Commission Legislative Oversight Committee” in (c)(2)(B).

The 2015 amendment by No. 1258, in (c)(2)(B), substituted “Legislative Council” for “Arkansas Lottery Legislative Oversight Committee” and inserted “and approval.”

The 2017 amendment repealed (a)(2)(B).

The 2019 amendment rewrote (a)(6)(C); and added (a)(6)(D).

23-115-208. Sovereign immunity.

(a) This chapter does not waive the sovereign immunity of the State of Arkansas.

(b)(1) A claim in contract or in tort against the Office of the Arkansas Lottery or its employees shall be presented to the office.

(2) The office shall promulgate rules concerning the consideration of claims in contract or in tort presented to the office, including without limitation rules concerning the conduct of hearings on claims in contract or in tort.

(c)(1) A claimant may appeal the decision of the office under subsection (b) of this section to the Arkansas State Claims Commission.

(2) The claimant may:

(A) Within forty (40) days after the decision is rendered, file with the commission a notice of appeal of the decision of the office;

(B) Within forty (40) days after the decision is rendered, file with the office a motion for reconsideration requesting the office to reconsider its decision; and

(C) Within twenty (20) days after the office’s reconsideration or denial of the motion for reconsideration, file with the commission a notice of appeal of the decision of the office.

(3) When the office notifies parties of a decision of the office, it shall advise the parties of the right of appeal.

(d)(1)(A) Except as provided in subdivisions (d)(2)-(4) of this section, appeals of claims in contract or in tort against the office or its employees shall be conducted by the commission in the same manner as a claim under § 19-10-201 et seq.

(B) The commission shall consider an appeal de novo.

(2) A decision of the commission relating to a claim in contract or in tort against the office or its employees shall not be appealed to the General Assembly.

(3)(A) A valid claim in any amount against the office shall not be referred to the General Assembly for an appropriation.

(B) The Clerk of the Arkansas State Claims Commission shall notify the office of the amount of the valid claim.

(C) Upon receipt of notification from the clerk, the office shall deliver a check to the clerk, who shall deposit the sum as a nonrevenue receipt into the Miscellaneous Revolving Fund from

which he or she shall disburse the amount of the claim to the claimant.

(4) Written reports under § 19-10-212 shall be filed with the Legislative Council.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2015, No. 218, § 25; 2015, No. 1258, § 25.

A.C.R.C. Notes. Acts 2015, No. 1258, § 1, provided: “LEGISLATIVE FINDINGS. The General Assembly finds:

“(1) Amendment 92 to the Arkansas Constitution states in part: ‘The General Assembly may provide by law for the review by a legislative committee of administrative rules promulgated by a state agency before the administrative rules become effective; and that administrative rules promulgated by a state agency shall not become effective until reviewed and approved by the legislative committee charged by law with the review of administrative rules under subdivision (a)(1) of this section’;

“(2) As Amendment 92 does not define the term ‘state agency’, the General Assembly may establish a definition by law as part of its implementation of Amendment 92;

“(3) The General Assembly at this time wishes to exclude the Arkansas State Game and Fish Commission, the State Highway Commission, the Arkansas State Highway and Transportation Department, and institutions of higher education

from the definition of ‘state agency’ applied to the implementation of Amendment 92; and

“(4) The General Assembly or the Legislative Council reserve the right to amend the definition of ‘state agency’ in the future to include one (1) or all of the Arkansas State Game and Fish Commission, the State Highway Commission, the Arkansas State Highway and Transportation Department, and institutions of higher education.”

Publisher’s Notes. Acts 2015, No. 1258, § 25, specifically amended this section as amended by Acts 2015, No. 218.

Amendments. The 2015 amendment by No. 218 substituted “Office of the Arkansas Lottery” or “office” for “Arkansas Lottery Commission” throughout the section; substituted “commission” for “Arkansas State Claims Commission” throughout the section; and substituted “Arkansas Lottery Legislative Oversight Committee” for “Arkansas Lottery Commission Legislative Oversight Committee” in (d)(4).

The 2015 amendment by No. 1258 substituted “Legislative Council” for “Arkansas Lottery Legislative Oversight Committee” in (d)(4).

23-115-209. Appealing administrative orders of the Office of the Arkansas Lottery.

(a) A retailer, a vendor, or an applicant for a contract or a retailer license aggrieved by an administrative order of the Office of the Arkansas Lottery may appeal that decision to Pulaski County Circuit Court.

(b) The circuit court shall hear appeals from administrative orders of the office, and based upon the record of the proceedings before the office, may reverse the administrative order of the office only if the person appealing the administrative order proves the administrative order to be:

- (1) Clearly erroneous;
- (2) Procured by fraud;
- (3) A result of substantial misconduct by the office; or
- (4) Contrary to the United States Constitution, the Arkansas Constitution, or this chapter.

(c) The circuit court may remand an appeal to the office to conduct further hearings.

(d)(1) A person who appeals the award of a contract, including without limitation a major procurement contract, is liable for all costs of appeal and defense if the appeal is denied or the contract award upheld.

(2) If upon the motion of the office the circuit court finds the appeal to have been frivolous, the cost of appeal and defense shall include without limitation the following expenses of the office resulting from institution of the appeal:

- (A) Court costs;
- (B) Bond;
- (C) Legal fees; and
- (D) Loss of income.

(3) A person appealing the award of a contract may be entitled to the reasonable costs incurred in connection with the contract solicitation, including without limitation bid preparation costs.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, §§ 29, 30; 2015, No. 218, § 25.

Amendments. The 2015 amendment substituted “Office of the Arkansas Lottery” for “commission” in the section head-

ing; and “office” for “commission” throughout the section; inserted “circuit” in (b) and (d)(2); and deleted former (b)(2) and redesignated the remaining subdivisions accordingly.

23-115-210. [Repealed.]

Publisher’s Notes. This section, concerning the removal of a commission member, was repealed by Acts 2015, No.

218, § 25. The section was derived from Acts 2009, No. 605, § 1; 2009, No. 606, § 1.

23-115-211. Certain sections inapplicable.

In addition to any provision of law expressly exempting the Office of the Arkansas Lottery, the following sections shall not apply to the office:

- (1) Section 19-1-301 et seq.;
- (2) Section 19-4-1802;
- (3) Section 19-5-206;
- (4) Section 22-9-103;
- (5) Section 22-9-104; and
- (6) Section 25-27-104.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 31; 2010, No. 265, § 25; 2010, No. 294, § 25; 2015, No. 218, § 25.

Amendments. The 2015 amendment

substituted “Office of the Arkansas Lottery” for “Arkansas Lottery Commission” and “office” for “commission”; deleted former (1), (3), (6) and (9) and redesignated the remaining subdivisions accordingly.

23-115-212. Duties and responsibilities of internal auditor.

(a) The internal auditor employed by the Office of the Arkansas Lottery shall report directly to the Secretary of the Department of Finance and Administration.

(b) The secretary shall determine the duties and responsibilities of the internal auditor that:

(1) Assist the office in the office's obligations under § 23-115-206; and

(2) Are consistent with the suggested standards for the professional practice of internal auditing as adopted by the Institute of Internal Auditors, including without limitation:

(A) Preparing a formal written three-year audit plan and presenting it to the secretary for the secretary's approval;

(B) Conducting ongoing reviews of the internal procedures, records, and operating procedures of the office and the lotteries to:

(i) Verify compliance with established policies, procedures, and control systems;

(ii) Assure compliance with regulatory and statutory conditions; and

(iii) Assure adherence to generally accepted accounting principles; and

(C) Advising the secretary of inconsistencies within or improvements needed to the internal controls, operating procedures, or accounting procedures of the office or the lotteries.

(c)(1) The internal auditor shall report to the Legislative Council one (1) time per month to:

(A) Advise the Legislative Council concerning current issues and problems reported to the secretary under subsection (b) of this section; and

(B) Update the Legislative Council concerning the resolution of any audit findings of Arkansas Legislative Audit.

(2) The internal auditor is not required to file a report but shall include a statement in the monthly report of the office if:

(A) There are no current issues or problems reported to the office; and

(B) The office and Arkansas Legislative Audit agree that all audit findings are resolved.

History. Acts 2011, No. 207, § 24; 2015, No. 218, § 25; 2015, No. 1258, § 26; 2019, No. 910, §§ 3535-3539.

A.C.R.C. Notes. Acts 2015, No. 1258, § 1, provided: "LEGISLATIVE FINDINGS. The General Assembly finds:

"(1) Amendment 92 to the Arkansas Constitution states in part: 'The General Assembly may provide by law for the review by a legislative committee of administrative rules promulgated by a state agency before the administrative rules

become effective; and that administrative rules promulgated by a state agency shall not become effective until reviewed and approved by the legislative committee charged by law with the review of administrative rules under subdivision (a)(1) of this section';

"(2) As Amendment 92 does not define the term 'state agency', the General Assembly may establish a definition by law as part of its implementation of Amendment 92;

“(3) The General Assembly at this time wishes to exclude the Arkansas State Game and Fish Commission, the State Highway Commission, the Arkansas State Highway and Transportation Department, and institutions of higher education from the definition of ‘state agency’ applied to the implementation of Amendment 92; and

“(4) The General Assembly or the Legislative Council reserve the right to amend the definition of ‘state agency’ in the future to include one (1) or all of the Arkansas State Game and Fish Commission, the State Highway Commission, the Arkansas State Highway and Transportation Department, and institutions of higher education.”

Publisher’s Notes. Acts 2015, No. 1258, § 26, specifically amended this section as amended by Acts 2015, No. 218.

Amendments. The 2015 amendment by No. 218 substituted “Office of the Arkansas Lottery” for “Arkansas Lottery Commission” and “office” for “commission”

throughout the section; substituted “Director of the Department of Finance and Administration” for “commission” in (a); substituted “director” for “commission” in the introductory language of (b) and in (b)(2)(A), (b)(2)(C), and (c)(1)(A); substituted “Arkansas Lottery Legislative Oversight Committee” for “Arkansas Lottery Commission Legislative Oversight Committee” throughout (c)(1); and, in (c)(1)(B), inserted “any audit” and deleted “in the annual financial report for the commission” at the end.

The 2015 amendment by No. 1258 substituted “Legislative Council” for “Arkansas Lottery Legislative Oversight Committee” throughout (c)(1).

The 2019 amendment substituted “Secretary of the Department of Finance and Administration” for “Director of the Department of Finance and Administration” in (a); and substituted “secretary” for “director” and made similar changes throughout (b) and (c).

SUBCHAPTER 3 — EMPLOYEES OF OFFICE OF THE ARKANSAS LOTTERY

SECTION.

- 23-115-301. Director — Appointment — Duties.
- 23-115-302. Duties of director.
- 23-115-303. Employees — Background investigation.
- 23-115-304. Office of the Arkansas Lottery employees — Participation in Arkansas Public

SECTION.

- | | |
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| | Employees’ Retirement System. |
| 23-115-305. | Regular salaries. |
| 23-115-306. | Special salary allowances. |
| 23-115-307. | Expansion pool. |
| 23-115-308. | Participation in Arkansas Administrative Statewide Information System. |

Publisher’s Notes. Acts 2015, No. 218, § 25, substituted “Office of the Arkansas Lottery” for “Arkansas Lottery Commission” in the subchapter heading.

Effective Dates. Acts 2015, No. 218, § 34: Feb. 26, 2015. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the stability of the Arkansas Scholarship Lottery is critical to the success of the Arkansas Academic Challenge Scholarship Program; that changes to the operational structure of the lottery are needed to improve the creditability and function of the lottery; and that this act is

immediately necessary to ensure that the transition of lottery administration is as undisruptive as possible. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

23-115-301. Director — Appointment — Duties.

(a)(1)(A) The Governor shall appoint the Director of the Office of the Arkansas Lottery.

(B) The director is an employee of the Office of the Arkansas Lottery and shall direct the day-to-day operations and management of the office.

(2) The director is vested with powers and duties as specified by law.

(3) The director serves at the pleasure of the Governor.

(b)(1) An individual considered for appointment as director shall apply to the Identification Bureau of the Division of Arkansas State Police for a state and federal criminal background check to be conducted by the Identification Bureau of the Division of Arkansas State Police and the Federal Bureau of Investigation.

(2) The state and federal criminal background check shall conform to the applicable federal standards and shall include the taking of fingerprints.

(3) The applicant shall sign a consent to the release of information for the state and federal criminal background check.

(4) The office shall be responsible for the payment of any fee associated with the state and federal criminal background check.

(5) Upon completion of the state and federal criminal background check, the Identification Bureau of the Division of Arkansas State Police shall forward to the Governor and the office all releasable information obtained concerning the applicant.

(c) The Governor shall not appoint as director an individual who has:

(1) Been convicted of a felony or a gambling offense in a state or federal court of the United States;

(2) Been convicted of a crime involving moral turpitude; or

(3) Entered into a plea agreement to avoid felony prosecution.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2015, No. 218, § 25.

Amendments. The 2015 amendment, in (a)(1)(A), substituted “Governor” for “Arkansas Lottery Commission” and “Office of the Arkansas Lottery” for “Arkansas Lottery Commission”; in (a)(1)(B), substituted “Office of the Arkansas Lottery” for “Arkansas Lottery Commission” and

“office” for “commission”; deleted “by the commission and” preceding “by law” in (a)(2); substituted “Governor” for “commission” in (a)(3); substituted “office” for “commission” in (b)(4); substituted “Governor and the office” for “commission” in (b)(5); and, in the introductory language of (c), substituted “Governor” for “commission” and “appoint” for “employ.”

23-115-302. Duties of director.

(a) The Director of the Office of the Arkansas Lottery shall direct and supervise all administrative and technical activities related to the operation of a lottery in accordance with this chapter and with rules adopted by the Office of the Arkansas Lottery.

(b) The director shall:

(1) Facilitate the initiation and supervise and administer the operation of the lotteries;

(2) Direct personnel as deemed necessary;

(3) Employ and compensate persons and firms as deemed necessary;
 (4) Appoint, select, and employ officers, agents, and employees, including professional and administrative staff and personnel and hearing officers, and fix their compensation and pay their expenses as authorized by Arkansas law;

(5) Promote or provide for the promotion of lotteries and any functions related to the operation of a lottery;

(6)(A) Prepare a budget of the office with the information and in the form and manner required by the Chief Fiscal Officer of the State.

(B) The budget shall be presented to the Legislative Council before each regular session for presession budget meetings with Joint Budget Committee members attending under § 10-3-507;

(7) Require bond from retailers and vendors in amounts as required by the office;

(8) Report monthly to the office and the Legislative Council a complete statement of lottery revenues and expenses for the preceding month and an accompanying statement of net assets;

(9) Annually by November 15, report to the Legislative Council the following:

(A) For the immediately preceding fiscal year:

(i) The total amount of net proceeds from the state lottery; and

(ii) The amounts deposited into and disbursed from the Scholarship Shortfall Reserve Trust Account under § 23-115-802; and

(B) The office's projection for net proceeds from the state lottery for the current fiscal year; and

(10) Perform other duties generally associated with a director of an organization of an entrepreneurial nature.

(c) The director may for good cause suspend, revoke, or refuse to renew any contract or license entered into in accordance with this chapter and the rules of the office.

(d) The director or his or her designee may conduct hearings and administer oaths to persons to assure the security and integrity of lottery operations or to determine the qualifications of or compliance by vendors and retailers.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2010, No. 265, § 26; 2010, No. 294, § 26; 2011, No. 207, § 25; 2015, No. 218, § 25; 2015, No. 1258, § 27.

A.C.R.C. Notes. Acts 2015, No. 1258, § 1, provided: "LEGISLATIVE FINDINGS. The General Assembly finds:

"(1) Amendment 92 to the Arkansas Constitution states in part: 'The General Assembly may provide by law for the review by a legislative committee of administrative rules promulgated by a state agency before the administrative rules become effective; and that administrative rules promulgated by a state agency shall not become effective until reviewed and

approved by the legislative committee charged by law with the review of administrative rules under subdivision (a)(1) of this section';

"(2) As Amendment 92 does not define the term 'state agency', the General Assembly may establish a definition by law as part of its implementation of Amendment 92;

"(3) The General Assembly at this time wishes to exclude the Arkansas State Game and Fish Commission, the State Highway Commission, the Arkansas State Highway and Transportation Department, and institutions of higher education from the definition of 'state agency' ap-

plied to the implementation of Amendment 92; and

“(4) The General Assembly or the Legislative Council reserve the right to amend the definition of ‘state agency’ in the future to include one (1) or all of the Arkansas State Game and Fish Commission, the State Highway Commission, the Arkansas State Highway and Transportation Department, and institutions of higher education.”

Publisher’s Notes. Acts 2015, No. 1258, § 27, specifically amended this section as amended by Acts 2015, No. 218.

Amendments. The 2015 amendment by No. 218 substituted “Office of the Arkansas Lottery” for “Arkansas Lottery Commission” and “office” for “commission”

throughout the section; redesignated (b)(6) as (b)(6)(A); substituted “of the office with the information and in the form and manner required by the Chief Fiscal Officer of the State” for “for the approval of the commission” in (b)(6)(A); added (b)(6)(B); substituted “Arkansas Lottery Legislative Oversight Committee” for “Arkansas Lottery Commission Legislative Oversight Committee” in (b)(8) and the introductory language of (b)(9); and substituted “an organization” for “a commission” in (b)(10).

The 2015 amendment by No. 1258 substituted “Legislative Council” for “Arkansas Lottery Legislative Oversight Committee” in (b)(8) and the introductory language of (b)(9).

23-115-303. Employees — Background investigation.

(a) As required by Arkansas Constitution, Article 16, § 4, the General Assembly shall fix the salaries of all employees of the Office of the Arkansas Lottery, including without limitation the Director of the Office of the Arkansas Lottery.

(b) An office employee shall not have a financial interest in a vendor doing business or proposing to do business with the office.

(c) An office employee with decisionmaking authority shall not participate in a decision involving a retailer with whom the office employee has a financial interest.

(d)(1) An office employee who leaves the employment of the office shall not:

(A) Represent a vendor or retailer before the office for a period of two (2) years after leaving the employment of the office; or

(B) Engage in lobbying on any matter related to the operation or conduct of a lottery for a period of two (2) years after leaving the employment of the office.

(2)(A) Subdivision (d)(1) of this section is supplemental to § 19-11-701 et seq.

(B) If any provision of § 19-11-701 et seq. would impose a restriction on a specific employee greater than the restrictions under subdivision (d)(1) of this section, the provision of § 19-11-701 et seq. shall apply.

(e)(1) Each person considered for employment by the office shall apply to the Identification Bureau of the Division of Arkansas State Police for a state and federal criminal background check to be conducted by the Identification Bureau of the Division of Arkansas State Police and the Federal Bureau of Investigation.

(2) The state and federal criminal background check shall conform to the applicable federal standards and shall include the taking of fingerprints.

(3) The applicant shall sign a consent to the release of information for the state and federal criminal background check.

(4) The office shall be responsible for the payment of any fee associated with the state and federal criminal background check.

(5) Upon completion of the state and federal criminal background check, the Identification Bureau of the Division of Arkansas State Police shall forward to the office all releasable information obtained concerning the applicant.

(f) The office shall not employ an individual who has:

(1) Been convicted of a felony or a gambling offense in a state or federal court of the United States;

(2) Been convicted of a crime involving moral turpitude; or

(3) Entered into a plea agreement to avoid felony prosecution.

(g)(1) The office shall bond an office employee with access to office funds or lottery revenue in an amount as provided by the office and may bond other office employees as deemed necessary.

(2) Bonds under subdivision (g)(1) of this section shall be fidelity bonds in excess of the amount provided by the Governmental Bonding Board.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2015, No. 218, § 25.

Amendments. The 2015 amendment substituted “Office of the Arkansas Lot-

tery” for “Arkansas Lottery Commission” and “office” for “commission” throughout the section.

23-115-304. Office of the Arkansas Lottery employees — Participation in Arkansas Public Employees’ Retirement System.

(a) Employees of the Office of the Arkansas Lottery shall be members of the Arkansas Public Employees’ Retirement System.

(b) An office employee’s compensation for retirement purposes includes the base salary of the employee under § 23-115-305 and any special salary allowances under § 23-115-306.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2011, No. 20, § 2; 2011, No. 207, § 26; 2013, No. 1173, § 15; 2015, No. 218, § 25; 2017, No. 693, § 1.

Amendments. The 2015 amendment substituted “Office of the Arkansas Lottery” for “Commission” in the section

heading and in (a); and “office” for “commission” throughout the section.

The 2017 amendment deleted (b)(2); redesignated former (b)(1) as (b); and added “and any special salary allowances under § 23-115-306” at the end of (b).

23-115-305. Regular salaries.

There are established for the Office of the Arkansas Lottery the following titles and grades for each position. The salary for the positions assigned to grades shall be determined in accordance with the pay level for the grade assigned in this section, as established in § 21-5-209.

Class Code	Title	No. of Employees	Grade
U128U	OAL DIRECTOR	1	SE-4
G056N	OAL GAMING DIRECTOR	1	SE-4
A024N	OAL INTERNAL AUDI- TOR	1	SE-1
D029N	OAL DEPUTY IT GAM- ING DIRECTOR	1	IT08
D113C	OAL SR. DATABASE AD- MINISTRATOR	1	IT07
D112C	OAL NETWORK ENGI- NEER	1	IT07
D110C	OAL QA SYSTEMS ANA- LYST	1	IT07
D111C	OAL IT SECURITY ANA- LYST	1	IT06
D119C	OAL LEAD COMPUTER OPERATOR	1	IT04
D108C	OAL APPLICATION SUPP SPECIALIST	1	IT02
D107C	OAL COMPUTER OPERA- TOR	2	IT01
G051N	OAL SALES DIRECTOR	1	GS15
G050N	OAL CHIEF LEGAL COUNSEL	1	GS15
A016N	OAL CHIEF FISCAL OF- FICER	1	GS15
G057N	OAL DIR SECURITY & COMPLIANCE	1	GS14
G047N	OAL MARKETING & AD- VERTISING DIR	1	GS14
G046N	OAL SALES TRNG & RE- TAIL COORD	1	GS13
G059N	OAL SECURITY DEPUTY DIR	1	GS12
A015N	OAL TREASURER	1	GS12
A014N	OAL CONTROLLER	1	GS12
G058N	OAL KEY CHAIN AC- COUNT MANAGER	1	GS11
G044N	OAL REGIONAL SALES MANAGER	2	GS11
A025N	OAL FINANCIAL ANA- LYST	1	GS10
G060N	OAL PRODUCT MAN- AGER	2	GS10

C106C	OAL OFFICE COORDINATOR	1	GS08
A026N	OAL AUDITOR	2	GS08
A120C	OAL ACCOUNTANT	4	GS08
A123C	OAL COLLECTIONS SPECIALIST	1	GS08
X211C	OAL SENIOR SECURITY SPECIALIST	1	GS08
X208C	OAL CLAIMS CENTER MANAGER	1	GS07
P069C	OAL GRAPHIC SPECIALIST	1	GS07
G260C	OAL MARKETING SALES REP	20	GS07
P072C	OAL PUBLICATION SPECIALIST	1	GS07
P070C	OAL OFFICE CAMPAIGN COORDINATOR	1	GS07
X210C	OAL LICENSING MANAGER	1	GS07
A122C	OAL FISCAL SPECIALIST	1	GS06
G261C	OAL DRAW MANAGER	2	GS06
X209C	OAL SECURITY SPECIALIST	1	GS06
X213C	OAL LICENSING SPECIALIST	3	GS05
X212C	OAL SECURITY SUPPORT SPECIALIST	1	GS04
X214C	OAL CLAIMS ASSISTANT	2	GS04
C105C	OAL RECEPTIONIST	1	GS03

TOTAL NO. OF POSITIONS: 72

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 32; 2015, No. 218, § 25; 2017, No. 693, § 2.

Amendments. The 2015 amendment substituted “OFFC” for “CMSN” throughout the table; and, in the introductory language, substituted “Office of the Arkansas Lottery” for “Arkansas Lottery Commission” and deleted “Except for the purpose of determining the maximum annual salary rate, which is to be applicable

to each of the positions to which a salary grade is assigned in this section, in accordance with § 21-5-209, all positions set forth in this section shall be exempt from other provisions of the Uniform Classification and Compensation Act, § 21-5-201 et seq., but shall not be exempt from the Regular Salaries Procedures and Restrictions Act, § 21-5-101 et seq.”

The 2017 amendment rewrote the section.

23-115-306. Special salary allowances.

(a) With the approval of the Legislative Council or, if the General Assembly is in session, the Joint Budget Committee, the Governor may establish the salary of the Director of the Office of the Arkansas Lottery, the salary of the office's gaming director, and the salary of the office's internal auditor, that is up to fifty percent (50%) above the maximum pay level for the grade assigned to the title.

(b) With the approval of the Legislative Council or, if the General Assembly is in session, the Joint Budget Committee, the director may establish salaries that exceed the maximum pay level for the grade assigned to the title by no more than twenty-five percent (25%) for no more than ten percent (10%) of the positions authorized in § 23-115-305.

(c) Salaries established under this section above the maximum pay level for the grade assigned to the title shall be approved by the Legislative Council or, if the General Assembly is in session, the Joint Budget Committee.

(d)(1) The requirement of approval by the Legislative Council or, if the General Assembly is in session, the Joint Budget Committee, before granting a special salary allowance under this section is not a severable part of this section.

(2) If the requirement of approval by the Legislative Council or, if the General Assembly is in session, the Joint Budget Committee, is ruled unconstitutional by a court of competent jurisdiction, this section is void.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 33; 2010, No. 265, § 27; 2010, No. 294, § 27; 2015, No. 218, § 25; 2015, No. 1258, § 28; 2017, No. 693, § 2.

A.C.R.C. Notes. Acts 2015, No. 1258, § 1, provided: "LEGISLATIVE FINDINGS. The General Assembly finds:

"(1) Amendment 92 to the Arkansas Constitution states in part: 'The General Assembly may provide by law for the review by a legislative committee of administrative rules promulgated by a state agency before the administrative rules become effective; and that administrative rules promulgated by a state agency shall not become effective until reviewed and approved by the legislative committee charged by law with the review of administrative rules under subdivision (a)(1) of this section';

"(2) As Amendment 92 does not define the term 'state agency', the General Assembly may establish a definition by law as part of its implementation of Amendment 92;

"(3) The General Assembly at this time wishes to exclude the Arkansas State Game and Fish Commission, the State Highway Commission, the Arkansas State Highway and Transportation Department, and institutions of higher education from the definition of 'state agency' applied to the implementation of Amendment 92; and

"(4) The General Assembly or the Legislative Council reserve the right to amend the definition of 'state agency' in the future to include one (1) or all of the Arkansas State Game and Fish Commission, the State Highway Commission, the Arkansas State Highway and Transportation Department, and institutions of higher education."

Publisher's Notes. Acts 2015, No. 1258, § 28, specifically amended this section as amended by Acts 2015, No. 218.

Amendments. The 2015 amendment by No. 218 rewrote the introductory language of (a); substituted "Office of the Arkansas Lottery" for "Arkansas Lottery Commission" in (a)(1) and for "commis-

sion" in (a)(2); substituted "office" for "commission" in (a)(3); substituted "one and one-half (1½)" for "two and one-half (2½)" in (b); and substituted "Arkansas Lottery Legislative Oversight Committee" for "Arkansas Lottery Commission Legislative Oversight Committee" in (c)(1) and (2).

The 2015 amendment by No. 1258 substituted "Legislative Council" for "Arkan-

sas Lottery Legislative Oversight Committee" in the introductory language of (a), and in (c)(1), and (c)(2).

The 2017 amendment rewrote former (a) and (b); redesignated former (c)(1) and (c)(2) as present (d)(1) and (d)(2); added present (c); inserted "or, if the General Assembly is in session, the Joint Budget Committee" in (d)(1) and (d)(2); and made stylistic changes.

23-115-307. Expansion pool.

(a) The Office of the Arkansas Lottery is authorized a pool of ten (10) positions to be used to establish additional positions with the proper title and pay grade if the office does not have sufficient positions available to address growth needs.

(b) A position established under this section may exceed the highest salary rate established for the grade in this subchapter.

(c) A position shall not be authorized from the expansion pool until the specific position that is requested by the office is reviewed by the Legislative Council or, if the General Assembly is in session, the Joint Budget Committee.

(d) When seeking review of a position by the Legislative Council or, if the General Assembly is in session, the Joint Budget Committee, under this section, the office shall provide an organizational chart indicating the current structure of the office and its employees.

(e)(1) The requirement of review by the Legislative Council or, if the General Assembly is in session, the Joint Budget Committee, before authorizing a position from the expansion pool is not a severable part of this section.

(2) If the requirement of review by the Legislative Council or, if the General Assembly is in session, the Joint Budget Committee, is ruled unconstitutional by a court of competent jurisdiction, this section is void.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 34; 2015, No. 218, § 25; 2015, No. 1258, § 29; 2017, No. 693, § 2.

A.C.R.C. Notes. Acts 2015, No. 1258, § 1, provided: "LEGISLATIVE FINDINGS. The General Assembly finds:

"(1) Amendment 92 to the Arkansas Constitution states in part: 'The General Assembly may provide by law for the review by a legislative committee of administrative rules promulgated by a state agency before the administrative rules become effective; and that administrative rules promulgated by a state agency shall not become effective until reviewed and approved by the legislative committee charged by law with the review of admin-

istrative rules under subdivision (a)(1) of this section';

"(2) As Amendment 92 does not define the term 'state agency', the General Assembly may establish a definition by law as part of its implementation of Amendment 92;

"(3) The General Assembly at this time wishes to exclude the Arkansas State Game and Fish Commission, the State Highway Commission, the Arkansas State Highway and Transportation Department, and institutions of higher education from the definition of 'state agency' applied to the implementation of Amendment 92; and

"(4) The General Assembly or the Legislative Council reserve the right to

amend the definition of ‘state agency’ in the future to include one (1) or all of the Arkansas State Game and Fish Commission, the State Highway Commission, the Arkansas State Highway and Transportation Department, and institutions of higher education.”

Publisher’s Notes. Acts 2015, No. 1258, § 29, specifically amended this section as amended by Acts 2015, No. 218.

Amendments. The 2015 amendment by No. 218 substituted “Office of the Arkansas Lottery” for “Arkansas Lottery Commission” and “office” for “commission” throughout the section; substituted “Arkansas Lottery Legislative Oversight Committee” for “Arkansas Lottery Commission Legislative Oversight Committee” throughout the section; in (b), substituted “the highest salary rate” for “a

salary rate in excess of the highest rate”; and made stylistic changes.

The 2015 amendment by No. 1258 substituted “Legislative Council” for “Arkansas Lottery Legislative Oversight Committee” in (c), (d), (e)(1), and (e)(2).

The 2017 amendment inserted “or, if the General Assembly is in session, the Joint Budget Committee” throughout the section; in (a), substituted “a pool of ten (10)” for “an expansion pool of sixty (60)”, deleted “not to exceed the career service grade C130 and fifteen (15) positions not to exceed the professional and executive grade N922” preceding “to be used”, and substituted “with the proper title and pay grade” for “of the proper title and salary”; and, in (b), substituted “may” for “shall not” and “for the grade” for “by grade or by line item”.

23-115-308. Participation in Arkansas Administrative Statewide Information System.

(a) The Office of the Arkansas Lottery may participate in the Arkansas Administrative Statewide Information System.

(b) The Department of Finance and Administration shall be reimbursed under § 23-115-201 for services it provides to the office under subsection (a) of this section.

History. Acts 2009, No. 1405, § 55; 2015, No. 218, § 25.

Amendments. The 2015 amendment

substituted “Office of the Arkansas Lottery” for “Arkansas Lottery Commission” in (a); and added (b).

SUBCHAPTER 4 — OPERATION OF LOTTERY

SECTION.

- 23-115-401. Minority-owned businesses and female-owned businesses.
- 23-115-402. Restriction on sales — Definition.
- 23-115-403. Attachments, garnishments, or executions withheld from lottery prizes — Validity of tickets or shares — Lottery prize restrictions — Unclaimed lottery prizes.
- 23-115-404. Confidential information.
- 23-115-405. Intelligence sharing, reciprocal use, or restricted use agreements.

SECTION.

- 23-115-406. Authority of local government.
- 23-115-407. Video lotteries prohibited.
- 23-115-408. Video lotteries by institution or facility governed by other wagering laws prohibited.
- 23-115-409. Laws under other wagering chapters not affected.
- 23-115-410. [Repealed.]
- 23-115-411. Multidraw screen-based lottery game prohibited.

Effective Dates. Acts 2015, No. 218, § 34: Feb. 26, 2015. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the stability of the Arkansas Scholarship Lottery is critical to the success of the Arkansas Academic Challenge Scholarship Program; that changes to the operational structure of the lottery are needed to improve the creditability and function of the lottery; and that this act is immediately necessary to ensure that the transition of lottery administration is as undistruptive as possible. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodedified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

23-115-401. Minority-owned businesses and female-owned businesses.

(a) It is the intent of the General Assembly that the Office of the Arkansas Lottery encourage participation by minority-owned businesses and female-owned businesses in one (1) or more of the lotteries under this chapter.

(b) The office shall adopt a plan that encourages to the greatest extent possible a level of participation in the lotteries by minority-owned businesses and female-owned businesses and takes into account the total number of all retailers and vendors that may participate, including any subcontractors.

(c) The office shall provide training programs and other educational activities to encourage minority-owned businesses and female-owned businesses to compete for contracts on an equal basis.

(d) The office shall employ staff to develop and implement the plans and programs under subsections (b) and (c) of this section and to assist prospective vendors and retailers in entering into and competing for contracts.

(e) The office shall monitor the results of minority-owned business and female-owned business participation and shall report the results of minority-owned business and female-owned business participation to the Governor and the Legislative Council on at least an annual basis.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 35; 2015, No. 218, § 25; 2015, No. 1258, § 30.

A.C.R.C. Notes. Acts 2015, No. 1258, § 1, provided: "LEGISLATIVE FINDINGS. The General Assembly finds:

"(1) Amendment 92 to the Arkansas Constitution states in part: 'The General Assembly may provide by law for the review by a legislative committee of administrative rules promulgated by a state agency before the administrative rules become effective; and that administrative rules promulgated by a state agency shall not become effective until reviewed and approved by the legislative committee charged by law with the review of administrative rules under subdivision (a)(1) of this section';

"(2) As Amendment 92 does not define the term 'state agency', the General Assembly may establish a definition by law as part of its implementation of Amendment 92;

"(3) The General Assembly at this time wishes to exclude the Arkansas State Game and Fish Commission, the State Highway Commission, the Arkansas State Highway and Transportation Department, and institutions of higher education

from the definition of 'state agency' applied to the implementation of Amendment 92; and

"(4) The General Assembly or the Legislative Council reserve the right to amend the definition of 'state agency' in the future to include one (1) or all of the Arkansas State Game and Fish Commission, the State Highway Commission, the Arkansas State Highway and Transportation Department, and institutions of higher education."

Publisher's Notes. Acts 2015, No. 1258, § 30, specifically amended this section as amended by Acts 2015, No. 218.

Amendments. The 2015 amendment by No. 218 substituted "Office of the Arkansas Lottery" for "Arkansas Lottery Commission" and "office" for "commission" throughout the section; added "in one (1) or more of the lotteries under this chapter" at the end of (a); in (b), inserted "in the lotteries" and "that may participate"; rewrote (d); and substituted "Arkansas Lottery Legislative Oversight Committee" for "Arkansas Lottery Commission Legislative Oversight Committee" in (e).

The 2015 amendment by No. 1258 substituted "Legislative Council" for "Arkansas Lottery Legislative Oversight Committee" in (e).

23-115-402. Restriction on sales — Definition.

(a)(1) Unless authorized to do so in writing by the Director of the Office of the Arkansas Lottery, a person shall not sell a ticket or share at a price other than the price established by the Office of the Arkansas Lottery.

(2)(A) Only a retailer holding a valid certificate of authority from the office shall sell a ticket.

(B) This subsection does not prevent an individual who may lawfully purchase a ticket or share from making a gift of the ticket or share to another individual.

(b) This chapter does not prohibit the office from designating certain of its agents and employees to sell or give tickets or shares directly to the public.

(c) Subject to prior approval by the office, retailers may give away tickets or shares as a means of promoting goods or services to customers or prospective customers.

(d) A retailer shall not sell a ticket or share except from the locations evidenced by the retailer's license issued by the office unless the office authorizes in writing any temporary location not listed in the retailer's license.

(e)(1) A ticket or share shall not be sold or given to an individual under eighteen (18) years of age.

(2) An individual under eighteen (18) years of age is not eligible to win a lottery prize.

(f) An individual is not eligible to win a lottery prize while the individual is incarcerated in:

(1) The Division of Correction;

(2) The Division of Community Correction; or

(3) A county or municipal jail or detention facility.

(g)(1) A ticket or share shall not be sold by use of in-store credit, credit cards, charge cards, checks, or any form of deferred payment.

(2)(A) A retailer may choose whether to accept as a form of payment:

(i) Cash; or

(ii) Noncash, noncredit methods of payment, including without limitation debit cards or other electronic transfer of funds of the consumer to the retailer.

(B) A retailer that chooses to accept noncash, noncredit methods of payment is responsible for any costs, fees, or charge-backs that may be incurred with the noncash, noncredit transaction.

(3) As used in this subsection, “debit card” means any card issued by a financial institution to a consumer for use in initiating an electronic fund transfer from the account of the consumer at the financial institution for the purpose of transferring money between accounts or obtaining money, property, labor, or services.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2015, No. 218, § 25; 2017, No. 876, § 2; 2019, No. 910, § 1018.

Amendments. The 2015 amendment substituted “Office of the Arkansas Lottery” for “Arkansas Lottery Commission” and “office” for “commission” throughout the section; inserted “the price” in (a)(1); and substituted “a ticket or share” for “tickets or shares” in (a)(2)(B) and (e)(1).

The 2017 amendment added (g).

The 2019 amendment substituted “Division of Correction” for “Department of Correction” in (f)(1); and substituted “Division of Community Correction” for “Department of Community Correction” in (f)(2).

23-115-403. Attachments, garnishments, or executions withheld from lottery prizes — Validity of tickets or shares — Lottery prize restrictions — Unclaimed lottery prizes.

(a) Proceeds of a lottery prize are subject to Arkansas state income tax.

(b)(1) Except as otherwise provided in this chapter, attachments, garnishments, or executions served upon the Office of the Arkansas Lottery that are authorized and issued under Arkansas law shall be honored if timely served upon the office.

(2) Subdivision (b)(1) of this section does not apply to a retailer.

(c)(1)(A) The office shall adopt rules to establish a system of verifying the validity of tickets or shares claimed to win lottery prizes and to effect payment of lottery prizes.

(B) A lottery prize, any portion of a lottery prize, or any right of any individual to a lottery prize is not assignable.

(C)(i) A lottery prize or any portion of a lottery prize remaining unpaid at the death of a lottery prize winner shall be paid to the estate of the deceased lottery prize winner or to the trustee of a trust established by the deceased lottery prize winner as settlor if:

(a) A copy of the trust document or instrument has been filed with the office along with a notarized letter of direction from the settlor; and

(b) A written notice of revocation has not been received by the office before the settlor's death.

(ii) Following a settlor's death and before any payment to a successor trustee, the office shall obtain from the trustee a written agreement to indemnify and hold the office harmless with respect to any claims that may be asserted against the office arising from payment to or through the trust.

(D) Under an appropriate judicial order, an individual shall be paid the lottery prize to which a winner is entitled.

(2) A lottery prize shall not be paid for a claim ticket that is:

(A) Stolen, counterfeit, altered, fraudulent, unissued, produced or issued in error, unreadable, not received, or not recorded by the office within applicable deadlines;

(B) Lacking in captions that conform and agree with the play symbols as appropriate to the particular lottery involved; or

(C) Not in compliance with rules and public or confidential validation and security tests of the office appropriate to the particular lottery involved.

(3)(A) A particular lottery prize in any lottery shall not be paid more than one (1) time.

(B) If there is a determination that more than one (1) claimant is entitled to a particular lottery prize, the sole remedy of the claimants is the award to each of them of an equal share in the lottery prize.

(4)(A) Within one hundred eighty (180) days after the drawing in which a cash lottery prize has been won, a holder of a winning cash ticket or share from an Arkansas lottery or from a multistate or multisovereign lottery shall claim the cash lottery prize.

(B)(i) In an Arkansas lottery in which a player may determine instantly if he or she has won or lost, a player who has won shall claim a cash lottery prize within ninety (90) days after the playing of the instant game.

(ii) In any multistate or multisovereign lottery in which a player may determine instantly if he or she has won or lost, a player who has won shall claim a cash lottery prize within one hundred eighty (180) days after the playing of the instant game.

(C) If a valid claim is not made for a cash lottery prize within the applicable period, the cash lottery prize constitutes an unclaimed lottery prize for purposes of this section.

(D) The office at any time may alter the time periods under subdivisions (c)(4)(A) and (B) of this section by rule.

(5) If practicable, an auditor chosen by the office shall be present at a draw to determine the winners of a draw game to verify the accuracy of the results.

(d)(1) A lottery prize shall not be paid upon a ticket or share purchased or sold in violation of this chapter.

(2) A lottery prize described in subdivision (d)(1) of this section is an unclaimed lottery prize for purposes of this section.

(e) The office is discharged of all liability upon payment of a lottery prize.

(f)(1) The office shall not pay a lottery prize that exceeds the amount of five hundred dollars (\$500) to any:

(A) Employee of the office; or

(B) Member of the immediate family of an employee of the office living in the same household as the employee.

(2) If an officer, employee, agent, or subcontractor of a vendor has access to confidential information that may compromise the integrity of a lottery, a ticket or share shall not be purchased by and a lottery prize shall not be paid to:

(A) The officer, employee, agent, or subcontractor of the vendor; or

(B) A member of the immediate family of the officer, employee, agent, or subcontractor of the vendor.

(g)(1) During a fiscal year, the office may expend up to two million five hundred thousand dollars (\$2,500,000) of unclaimed lottery prize money for one (1) or more of the following:

(A) Increasing the pool from which future lottery prizes are to be awarded;

(B) Maintaining online game reserves at a fiscally sound level; or

(C) Prize promotion.

(2) On the last day of each fiscal year, the office shall deposit into the trust account for net lottery proceeds the amount of unclaimed lottery prize money existing at the end of the fiscal year less one million dollars (\$1,000,000).

(3) The office shall include in its monthly reports to the Legislative Council the following monthly and year-to-date amounts:

(A) Unclaimed lottery prize money;

(B) Expenditures from unclaimed lottery prize money; and

(C) Deposits to net lottery proceeds from unclaimed lottery prize money.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 36; 2010, No. 265, § 28; 2010, No. 294, § 28; 2011, No. 207, § 27; 2011, No. 1180, § 3; 2015, No. 218, § 25; 2015, No. 1258, § 31.

A.C.R.C. Notes. Acts 2015, No. 1258, § 1, provided: "LEGISLATIVE FINDINGS. The General Assembly finds:

"(1) Amendment 92 to the Arkansas Constitution states in part: 'The General

Assembly may provide by law for the review by a legislative committee of administrative rules promulgated by a state agency before the administrative rules become effective; and that administrative rules promulgated by a state agency shall not become effective until reviewed and approved by the legislative committee charged by law with the review of administrative rules under subdivision (a)(1) of this section’;

“(2) As Amendment 92 does not define the term ‘state agency’, the General Assembly may establish a definition by law as part of its implementation of Amendment 92;

“(3) The General Assembly at this time wishes to exclude the Arkansas State Game and Fish Commission, the State Highway Commission, the Arkansas State Highway and Transportation Department, and institutions of higher education from the definition of ‘state agency’ applied to the implementation of Amendment 92; and

“(4) The General Assembly or the Legislative Council reserve the right to amend the definition of ‘state agency’ in the future to include one (1) or all of the Arkansas State Game and Fish Commis-

sion, the State Highway Commission, the Arkansas State Highway and Transportation Department, and institutions of higher education.”

Publisher’s Notes. Acts 2015, No. 1258, § 31, specifically amended this section as amended by Acts 2015, No. 218.

Amendments. The 2015 amendment by No. 218 substituted “office” for “commission” throughout the section; in (b)(1), inserted “served upon the Office of the Arkansas Lottery that are,” substituted “honored” for “withheld,” and substituted “office” for “Arkansas Lottery Commission”; redesignated the introductory language of (c) as (c)(1)(A) and redesignated the subdivisions in (c)(1); substituted “for a claim ticket that is” for “arising from claimed tickets that are” in the introductory language of (c)(2); redesignated (c)(5)(A) as (c)(5) and deleted (c)(5)(B); deleted (f)(1)(A) and redesignated the remaining subdivisions accordingly; rewrote (f)(1)(B); and substituted “Arkansas Lottery Legislative Oversight Committee” for “Arkansas Lottery Commission Legislative Oversight Committee” in (g)(3).

The 2015 amendment by No. 1258 substituted “Legislative Council” for “Arkansas Lottery Legislative Oversight Committee” in (g)(3).

23-115-404. Confidential information.

(a)(1) Except as provided in subdivision (a)(2) of this section, the Office of the Arkansas Lottery shall comply with the Freedom of Information Act of 1967, § 25-19-101 et seq.

(2) The following records or information shall be treated as confidential and are exempt from public disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.:

(A) Information pertaining to the security of lottery games and lottery operations, including without limitation:

- (i) Security measures, systems, or procedures; and
- (ii) Security reports; and

(B) Any records exempt from disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.

(b) Arkansas Legislative Audit shall have full access to the records of the office.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 37; 2015, No. 218, § 25.

Amendments. The 2015 amendment

substituted “Office of the Arkansas Lottery” for “Arkansas Lottery Commission” in (a)(1); and substituted “office” for “commission” in (b).

23-115-405. Intelligence sharing, reciprocal use, or restricted use agreements.

(a) The Office of the Arkansas Lottery may enter into an intelligence sharing, reciprocal use, or restricted use agreement with the United States Government, law enforcement agencies, lottery regulation agencies, and gaming enforcement agencies of other jurisdictions that provide for and regulate the use of information provided and received under the agreement.

(b) Records, documents, and information in the possession of the office received under subsection (a) of this section are exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq., and shall not be released without the permission of the person or agency providing the records, documents, and information.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2015, No. 218, § 25.

Amendments. The 2015 amendment substituted “Office of the Arkansas Lot-

tery” for “Arkansas Lottery Commission” in (a); and substituted “office” for “commission” in (b).

23-115-406. Authority of local government.

(a)(1) The authority of local government concerning all matters relating to the operation of lotteries is preempted by this chapter.

(2) Local government shall not take any action, including without limitation the adoption of an ordinance, relating to the operation of lotteries.

(b) This section does not prohibit local government from requiring a retailer to obtain an occupational license for any business unrelated to the sale of tickets or shares.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2015, No. 218, § 25.

Amendments. The 2015 amendment made no changes to this section.

23-115-407. Video lotteries prohibited.

A video lottery shall not be used as part of a lottery under this chapter.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2015, No. 218, § 25.

Amendments. The 2015 amendment made no changes to this section.

23-115-408. Video lotteries by institution or facility governed by other wagering laws prohibited.

This chapter does not permit the use of a video lottery for any purposes by any institution or facility governed by the:

- (1) Arkansas Horse Racing Law, § 23-110-101 et seq.;
- (2) Arkansas Greyhound Racing Law, § 23-111-101 et seq.; or
- (3) Local Option Horse Racing and Greyhound Racing Electronic Games of Skill Act, § 23-113-101 et seq.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2015, No. 218, § 25.

Amendments. The 2015 amendment made no changes to this section.

23-115-409. Laws under other wagering chapters not affected.

This chapter does not alter wagering that may be conducted under the Arkansas Horse Racing Law, § 23-110-101 et seq., the Arkansas Greyhound Racing Law, § 23-111-101 et seq., or the Local Option Horse Racing and Greyhound Racing Electronic Games of Skill Act, § 23-113-101 et seq.

History. Acts 2009, No. 1405, § 38; 2015, No. 218, § 25.

Amendments. The 2015 amendment made no changes to this section.

23-115-410. [Repealed.]

A.C.R.C. Notes. Acts 2015, No. 1262, § 1, repealed this section in its entirety. This section was also amended by Acts 2015, Nos. 218 and 1258.

Publisher's Notes. This section, concerning compulsive gambling disorder

treatment and educational programs, was repealed by Acts 2015, No. 1262, § 1. The section was derived from Acts 2010, No. 265, § 29; 2010, No. 294, § 29; 2011, No. 207, § 28; 2011, No. 1179, § 2; 2015, No. 218, § 25; 2015, No. 1258, § 32.

23-115-411. Multidraw screen-based lottery game prohibited.

(a)(1) A multidraw screen-based lottery game shall not be used as part of a lottery under this chapter except as provided under subdivision (a)(2) of this section.

(2) All lottery games operated by the Office of the Arkansas Lottery on or before June 29, 2014, are permitted and may continue as a part of the Arkansas Scholarship Lottery.

(b) The prohibition of multidraw screen-based lottery games shall expire on March 13, 2015.

History. Acts 2014 (2nd Ex. Sess.) No. 4; 2014 (2nd Ex. Sess.) No. 8; 2015, No. 218, § 25.

substituted "Office of the Arkansas Lottery" for "Arkansas Lottery Commission" in (a)(2).

Amendments. The 2015 amendment

SUBCHAPTER 5 — VENDORS

SECTION.

23-115-501. Vendors — Requirements when submitting bid, proposal, or offer — Major procurement contract.

23-115-502. Vendor — Performance bond or letter of credit.

23-115-503. Cancellation, suspension, revocation, or termination of

SECTION.

major procurement contract.

23-115-504. Political contributions by vendors — Legislative findings.

Effective Dates. Acts 2015, No. 218, § 34: Feb. 26, 2015. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the stability of the Arkansas Scholarship Lottery is critical to the success of the Arkansas Academic Challenge Scholarship Program; that changes to the operational structure of the lottery are needed to improve the creditability and function of the lottery; and that this act is immediately necessary to ensure that the transition of lottery administration is as undistruptive as possible. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

23-115-501. Vendors — Requirements when submitting bid, proposal, or offer — Major procurement contract.

(a) The Office of the Arkansas Lottery shall investigate the financial responsibility, security, and integrity of a vendor who is a finalist in submitting a bid, proposal, or offer to perform a major procurement contract.

(b) At the time of submitting a bid, proposal, or offer to the office, a vendor shall include:

(1) A disclosure of the vendor's name and address and, as applicable, the names and addresses of the following:

(A)(i) If the vendor is a corporation, the officers, directors, and each stockholder holding more than a ten percent (10%) interest in the corporation.

(ii) However, in the case of owners of equity securities of a publicly traded corporation, only the names and addresses of those known to the corporation to own beneficially five percent (5%) or more of the securities need be disclosed;

(B) If the vendor is a trust, the trustee and all persons entitled to receive income or benefits from the trust;

(C) If the vendor is an association, the members, officers, and directors; and

(D) If the vendor is a partnership or joint venture, all of the general partners, limited partners, or joint venturers;

(2) A disclosure of all the states and jurisdictions in which the vendor does business and the nature of the business for each state or jurisdiction;

(3) A disclosure of all the states and jurisdictions in which the vendor has contracts to supply gaming goods or services, including without limitation lottery goods and services, and the nature of the goods or services involved for each state or jurisdiction;

(4)(A) A disclosure of all the states and jurisdictions in which the vendor has applied for, has sought renewal of, has received, has been denied, has pending, or has had revoked a lottery or gaming license of any kind or had fines or penalties assessed to the vendor's license, contract, or operation and the disposition of each instance in each state or jurisdiction.

(B) If a lottery or gaming license or contract has been revoked or has not been renewed or any lottery or gaming license or application has been either denied or is pending and has remained pending for more than six (6) months, all of the facts and circumstances underlying the failure to receive a license shall be disclosed;

(5)(A) A disclosure of the details of a finding or plea, conviction, or adjudication of guilt in a state, federal, foreign, or international court or tribunal for a criminal offense other than a traffic violation committed by the vendor or a person identified under subdivision (b)(1) of this section.

(B)(i) The office may request that any or all of the persons identified under subdivision (b)(1) of this section undergo a state and federal criminal background check.

(ii) If requested, a state and federal criminal background check shall be conducted under § 23-115-601(e);

(6) A disclosure of the details of a vendor's:

(A) Bankruptcy, insolvency, or reorganization;

(B) Corporate or individual purchase or takeover of another corporation, including without limitation the assumption of bonded indebtedness or other debts or liabilities; and

(C) Pending litigation;

(7) The vendor's most recent financial statement, the most recent audit report of the vendor's operations, and a disclosure of the vendor's internal financial controls and procedures for financial reporting; and

(8) Additional disclosures and information that the office determines is appropriate for the major procurement contract involved.

(c) If any portion of a vendor's contract is subcontracted, the vendor shall disclose all of the information required by this section for the subcontractor as if the subcontractor were itself a vendor.

(d)(1) The office shall not enter into a major procurement contract with a vendor that:

(A) Has not complied with the disclosure requirements of this section;

(B) Has been found guilty of a felony related to the security or integrity of a lottery in this or any other jurisdiction; or

(C) Has an ownership interest in an entity that has supplied lottery goods or services under contract to the office regarding the request for proposals pertaining to those particular goods or services.

(2) The office may terminate a major procurement contract with a vendor that does not comply with requirements for periodically updating disclosures during the term of a major procurement contract as specified in the major procurement contract.

(3) This section shall be construed broadly and liberally to achieve full disclosure of all information necessary to allow for a full and complete evaluation by the office of the competence, integrity, background, and character of a vendor for a major procurement contract.

(e)(1) A vendor who provides or proposes to provide goods or services under a major procurement contract shall not provide a gift or compensation to:

(A) The Director of the Office of the Arkansas Lottery, an employee of the office, the Secretary of the Department of Finance and Administration, the Deputy Director of the Department of Finance and Administration, or a member of the Legislative Council; or

(B) A member of the immediate family of the Director of the Office of the Arkansas Lottery, an employee of the office, the secretary, the Deputy Director of the Department of Finance and Administration, or a member of the Legislative Council.

(2)(A) A person who knowingly violates subdivision (e)(1) of this section shall be guilty of a Class A misdemeanor.

(B) The Arkansas Ethics Commission may investigate and enforce alleged violations of subdivision (e)(1) of this section under the authority granted by §§ 7-6-217 and 7-6-218.

(f)(1) A public official, the secretary, and the Deputy Director of the Department of Finance and Administration shall not knowingly own a financial interest in a vendor.

(2)(A) If a public official, the secretary, or the Deputy Director of the Department of Finance and Administration becomes aware that he or she owns a financial interest in a vendor, the public official, the secretary, or the Deputy Director of the Department of Finance and Administration shall divest the financial interest as soon as possible.

(B) A public official, the secretary, or the Deputy Director of the Department of Finance and Administration shall not divest the financial interest to a member of his or her immediate family.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 39; 2015, No. 218, § 25; 2015, No. 1258, § 33; 2019, No. 910, §§ 3540, 3541.

A.C.R.C. Notes. Acts 2015, No. 1258, § 1, provided: "LEGISLATIVE FINDINGS. The General Assembly finds:

"(1) Amendment 92 to the Arkansas Constitution states in part: 'The General Assembly may provide by law for the review by a legislative committee of ad-

ministrative rules promulgated by a state agency before the administrative rules become effective; and that administrative rules promulgated by a state agency shall not become effective until reviewed and approved by the legislative committee charged by law with the review of administrative rules under subdivision (a)(1) of this section';

"(2) As Amendment 92 does not define the term 'state agency', the General As-

sembly may establish a definition by law as part of its implementation of Amendment 92;

“(3) The General Assembly at this time wishes to exclude the Arkansas State Game and Fish Commission, the State Highway Commission, the Arkansas State Highway and Transportation Department, and institutions of higher education from the definition of ‘state agency’ applied to the implementation of Amendment 92; and

“(4) The General Assembly or the Legislative Council reserve the right to amend the definition of ‘state agency’ in the future to include one (1) or all of the Arkansas State Game and Fish Commission, the State Highway Commission, the Arkansas State Highway and Transportation Department, and institutions of higher education.”

Publisher’s Notes. Acts 2015, No. 1258, § 33, specifically amended this section as amended by Acts 2015, No. 218.

Amendments. The 2015 amendment by No. 218 substituted “Office of the Arkansas Lottery” for “Arkansas Lottery

Commission” and “office” for “commission” throughout the section; substituted “to perform” for “as part of” in (a); substituted “a vendor shall include” for “the commission shall require the following items” in the introductory language of (b); substituted “holding” for “of” in (b)(1)(A)(i); rewrote (b)(5)(A), (b)(6), and (b)(7); substituted “major procurement contract” for “procurement” in (b)(8); substituted “term” for “tenure” in (d)(2); rewrote (e)(1)(A) and (B) and (e)(2)(B); and inserted “the Director of the Department of Finance and Administration, and the Deputy Director of the Department of Finance and Administration” in (f)(1) and inserted similar language in (f)(2) and (3).

The 2015 amendment by No. 1258 substituted “Legislative Council” for “Arkansas Lottery Legislative Oversight Committee” in (e)(1)(A) and (B).

The 2019 amendment substituted “Secretary of the Department of Finance and Administration” for “Director of the Department of Finance and Administration” in (e)(1)(A), (e)(1)(B), and throughout (f).

23-115-502. Vendor — Performance bond or letter of credit.

(a)(1) At the time of execution of a major procurement contract between the Office of the Arkansas Lottery and a vendor, the vendor shall post a performance bond or letter of credit from a bank or credit provider acceptable to the office in an amount deemed necessary by the office to assure the performance of the major procurement contract.

(2) In lieu of the bond, the vendor may deposit and maintain with the office securities acceptable to the office that are:

(A) Interest bearing or accruing; and

(B) Rated in one (1) of the three (3) highest classifications by an established, nationally recognized investment rating service.

(3) Securities eligible under this section are limited to:

(A) Certificates of deposit in an amount fully insured by the Federal Deposit Insurance Corporation issued by solvent banks or savings associations, if the solvent banks or savings associations are:

(i) Approved by the office; and

(ii) Organized and existing under the laws of this state or under the laws of the United States;

(B) United States Government bonds, notes, and bills for which the full faith and credit of the United States Government is pledged for the payment of principal and interest;

(C) Federal agency securities by an agency or instrumentality of the United States Government; and

(D)(i) Corporate bonds approved by the office.

(ii) The entity that issued the bonds shall not be an affiliate or subsidiary of the depositor.

(4) The securities shall be held in trust and shall at all times be in an amount as deemed necessary by the office for the major procurement contract.

(b)(1) Each vendor shall be qualified to do business in this state and shall file appropriate tax returns as provided by the laws of this state.

(2) A major procurement contract under this section shall be governed by the laws of this state except as provided in this chapter.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 40; 2015, No. 218, § 25.

Amendments. The 2015 amendment substituted "Office of the Arkansas Lottery" for "Arkansas Lottery Commission" and "office" for "commission" throughout

the section; rewrote (a)(1); in the introductory language of (a)(2), deleted "to assure the faithful performance of its obligations" following "bond" and inserted "acceptable to the office"; and deleted "particular bid or" preceding "major" in (a)(4).

23-115-503. Cancellation, suspension, revocation, or termination of major procurement contract.

(a) A major procurement contract executed by the Office of the Arkansas Lottery under this chapter shall specify the reasons for which the major procurement contract may be canceled, suspended, revoked, or terminated by the office. The reasons shall include without limitation:

- (1) Commission of a violation of this chapter or a rule of the office;
- (2) Commission of any fraud, deceit, or misrepresentation;
- (3) Conduct prejudicial to public confidence in a lottery;
- (4) The vendor's filing for or being placed in bankruptcy or receivership; or

(5) Any material change as determined in the sole discretion of the office in any matter considered by the office in entering into the major procurement contract with the vendor.

(b)(1) If the Director of the Office of the Arkansas Lottery or his or her designee determines that cancellation, denial, revocation, suspension, or the failure to renew a major procurement contract is in the best interest of the Arkansas Scholarship Lottery, the public welfare, or the State of Arkansas, the director or his or her designee may:

(A) Subject to notice and a right to a hearing, cancel, suspend, revoke, or terminate a major procurement contract issued under this chapter; or

(B) Fail to renew a major procurement contract issued under this chapter.

(2) The major procurement contract may be temporarily suspended by the director or his or her designee without prior notice pending a hearing.

(3) A major procurement contract may be suspended, revoked, or terminated by the director or his or her designee for any one (1) or more of the reasons enumerated in this section.

(c) Hearings under this section shall be held in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2015, No. 218, § 25; 2017, No. 334, § 8.

Amendments. The 2015 amendment substituted “Office of the Arkansas Lottery” for “Arkansas Lottery Commission” and “office” for “commission” throughout the section; substituted “entering into” for “executing” in (a)(5); rewrote (b)(1); and deleted “commission approval or” preceding “prior notice” in (b)(2).

The 2017 amendment subdivided former (b)(1) into present (b)(1), (b)(1)(A), and (b)(1)(B); substituted “Subject to notice and a right to a hearing, cancel, suspend, revoke, or terminate a major procurement contract issued under this chapter; or” for “cancel, suspend, revoke, or terminate subject to notice and a right to a hearing or” in (b)(1)(A); and made stylistic changes.

23-115-504. Political contributions by vendors — Legislative findings.

(a) The General Assembly finds:

(1) That the integrity of the Office of the Arkansas Lottery and the Arkansas Scholarship Lottery is of utmost importance; and

(2) That the people of the State of Arkansas should have confidence and be assured that public officials are free of any improper political influence by vendors.

(b) A vendor awarded a major procurement contract for lottery equipment or tickets or an officer, employee, or agent of a vendor awarded a major procurement contract for lottery equipment or tickets shall not make a political contribution to a public official or a candidate for election as a public official.

(c) A vendor proposing to provide goods or services under a major procurement contract or an officer, employee, or agent of a vendor proposing to provide goods or services under a major procurement contract shall not make or promise to make a political contribution or future political contribution to a public official or a candidate for election as a public official while the award of the major procurement contract is pending.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 41; 2015, No. 218, § 25.

Amendments. The 2015 amendment added “Legislative findings” to the section heading; substituted “Office of the Arkansas Lottery and the Arkansas Scholarship Lottery” for “Arkansas Lottery Commis-

sion and lotteries” in (a)(1); substituted “improper” for “untoward” in (a)(2); redesignated (c)(1) as part of (c) and deleted (c)(2); and substituted “make or promise to make a political contribution or future political contribution” for “Make a political contribution” in (c).

SUBCHAPTER 6 — RETAILERS

SECTION.

23-115-601. Retailers.

23-115-602. Retailer license.

SECTION.

23-115-603. Bond account for deposit of bond fees — Reserve ac-

SECTION.

- count to cover losses — Retailer bond.
- 23-115-604. Cancellation, suspension, revocation, or termination of retailer license.
- 23-115-605. Retailers — Fiduciary duty — Protection against loss.
- 23-115-606. Retailer — Rental payments based on percentage of retail sales.

SECTION.

- 23-115-607. Business closure authority — Notice.
- 23-115-608. Administrative hearing.
- 23-115-609. Judicial relief.
- 23-115-610. Business closure procedure.
- 23-115-611. Revocation and suspension of business license.
- 23-115-612. Authority to promulgate rules.

Effective Dates. Acts 2015, No. 218, § 34: Feb. 26, 2015. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the stability of the Arkansas Scholarship Lottery is critical to the success of the Arkansas Academic Challenge Scholarship Program; that changes to the operational structure of the lottery are needed to improve the creditability and function of the lottery; and that this act is immediately necessary to ensure that the transition of lottery administration is as undisruptive as possible. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2019, No. 683, § 3: July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that to optimize scholarship dollars for the upcoming academic year, it is necessary to combine two funds in a timely manner; that excess funds from the combined new fund under this act must be transferred into the

scholarship fund at the end of the current fiscal year; and that this act is immediately necessary to ensure that the excess funds from the combined new fund can be transferred to a separate fund before the end of the current fiscal year for purposes of awarding scholarships. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

23-115-601. Retailers.

(a) The General Assembly recognizes that to conduct a successful lottery, the Office of the Arkansas Lottery must develop and maintain a statewide network of retailers that will serve the public convenience

and promote the sale of tickets or shares and the playing of lotteries while ensuring the integrity of lottery operations, games, and activities.

(b) The office shall make every effort to provide small retailers a chance to participate in the sales of tickets or shares.

(c) The office shall provide for compensation to retailers in the form of commissions in an amount of not less than five percent (5%) of gross sales of tickets and shares and may provide for other forms of compensation for services rendered in the sale or cashing of tickets or shares.

(d)(1) For purposes of display, the office shall issue a license to each person that it licenses as a retailer.

(2)(A) A retailer shall post its license and keep the license conspicuously displayed in a location on the premises accessible to the public.

(B) A license is not assignable or transferable.

(e)(1) A person seeking to be a retailer shall apply to the Identification Bureau of the Division of Arkansas State Police for a state and federal criminal background check, to be conducted by the bureau and the Federal Bureau of Investigation.

(2) The state and federal criminal background check shall conform to applicable federal standards and shall include the taking of fingerprints.

(3) The applicant shall sign a consent to the release of information for the state and federal criminal background check.

(4) The office shall be responsible for the payment of any fee associated with the state and federal criminal background check.

(5) Upon completion of the state and federal criminal background check, the bureau shall forward to the office all releasable information obtained concerning the applicant.

(f)(1) The office shall develop a list of objective criteria upon which the qualification of retailers shall be based.

(2) The office shall develop separate criteria to govern the selection of retailers of instant tickets.

(3) In developing the criteria, the office shall consider certain factors, including without limitation:

(A) The applicant's financial responsibility;

(B) Security of the applicant's place of business or activity;

(C) Accessibility to the public;

(D) The applicant's integrity; and

(E) The applicant's reputation.

(g) The office shall not consider political affiliation, activities, or monetary contributions to political organizations or candidates for any public office.

(h) The office shall not select a person to be a retailer that:

(1)(A) Is not current in filing all applicable tax returns to the State of Arkansas and in payment of all taxes, interest, and penalties owed to the State of Arkansas, excluding items under formal appeal under applicable statutes.

(B) The Department of Finance and Administration shall provide to the office the information required to verify compliance with subdivision (h)(1)(A) of this section;

(2) Has been convicted of a criminal offense related to the security or integrity of a lottery in this or any other jurisdiction;

(3)(A) Has been convicted of any illegal gambling activity, false statements, false swearing, or perjury in this or any other jurisdiction or convicted of any crime punishable by more than one (1) year of imprisonment or a fine of more than one thousand dollars (\$1,000), or both.

(B) Subdivision (h)(3)(A) of this section shall not apply if the person's civil rights have been restored and at least five (5) years have elapsed from the date of the completion of the sentence without a subsequent conviction of a crime described in subdivision (h)(3)(A) of this section;

(4) Has been found to have violated this chapter or any rule, policy, or procedure of the office unless:

(A) Ten (10) years have passed since the violation; or

(B) The office finds the violation both minor and unintentional in nature;

(5) Is a vendor or an employee or agent of a vendor doing business with the office;

(6) Is an employee of the office or a member of the immediate family of an employee of the office;

(7) Has made a statement of material fact to the office knowing the statement to be false; or

(8)(A) Is engaged exclusively in the business of selling tickets or shares.

(B) Subdivision (h)(8)(A) of this section does not preclude the office from selling or giving away tickets or shares for promotional purposes.

(i)(1) A person applying to become a retailer shall be charged a uniform application fee determined by rule for each lottery outlet.

(2) A retailer license may be renewable annually in the discretion of the office unless canceled or terminated by the office.

(3) The office may establish by rule a reasonable fee for the issuance, reissuance, fine, or penalty associated with the process, procedures, or enforcement necessary to issue or maintain a retailer license, including without limitation to cover the cost of:

(A) An initial and any subsequent state and federal criminal background check under this subchapter; and

(B) The reporting, communications technology, and banking processes necessary to implement and enforce this subchapter.

(j)(1) A retailer or an applicant to be a retailer shall not provide a gift or compensation to:

(A) The Director of the Office of the Arkansas Lottery, an employee of the office, the Secretary of the Department of Finance and Administration, or the Deputy Director of the Department of Finance and Administration; or

(B) A member of the immediate family of the Director of the Office of the Arkansas Lottery, an employee of the office, the secretary, or

the Deputy Director of the Department of Finance and Administration.

(2)(A) A person who knowingly violates subdivision (j)(1) of this section shall be guilty of a Class A misdemeanor.

(B) The Arkansas Ethics Commission shall have the authority to investigate and enforce alleged violations of subdivision (j)(1) of this section granted by §§ 7-6-217 and 7-6-218.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 42; 2010, No. 265, § 30; 2010, No. 294, § 30; 2013, No. 1173, § 16; 2015, No. 218, § 25; 2017, No. 334, § 9; 2019, No. 910, §§ 3542-3544.

Amendments. The 2015 amendment substituted “Office of the Arkansas Lottery” for “Arkansas Lottery Commission” and “office” for “commission” throughout the section; substituted “seeking to be” for “considered as” in (e)(1); redesignated former (f)(4) as (g); redesignated and rewrote former (f)(5)(A) and (B) as (h); redesignated former (f)(5)(C)-(E) as (i); and redesignated and rewrote former (g) as (j).

The 2017 amendment substituted “its license and keep the license conspicuously displayed in a location on the premises accessible to the public” for “and keep conspicuously displayed in a location on the premises accessible to the public its license” in (d)(2)(A).

The 2019 amendment substituted “Division of Arkansas State Police” for “Department of Arkansas State Police” twice in (e)(1), and in (e)(5); and substituted “Secretary of the Department of Finance and Administration” for “Director of the Department of Finance and Administration” in (j)(1)(A) and (j)(1)(B).

23-115-602. Retailer license.

(a) A retailer license is not transferable or assignable.

(b) A retailer shall not contract with any person for lottery goods or services except with the approval of the Office of the Arkansas Lottery.

(c) Tickets and shares shall be sold only by the retailer stated on the retailer’s license issued by the office under this chapter.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2015, No. 218, § 25.

Amendments. The 2015 amendment substituted “Office of the Arkansas Lot-

tery” for “Arkansas Lottery Commission” in (b); and substituted “office for “commission” in (c).

23-115-603. Bond account for deposit of bond fees — Reserve account to cover losses — Retailer bond.

(a)(1) The Office of the Arkansas Lottery shall require a retailer to post a bond in a sufficient amount as determined by the office.

(2) The amount of the bond under subdivision (a)(1) of this section shall not exceed two hundred dollars (\$200).

(3) The office shall establish a separate account into which bond fees shall be deposited.

(4) Moneys deposited into the bond account may be:

(A) Invested or deposited into one (1) or more interest-bearing accounts;

(B) Used to cover losses the office experiences due to nonfeasance, misfeasance, or malfeasance of a retailer; and

(C) Used to purchase blanket bonds covering the office against losses from all retailers.

(5) At the end of each fiscal year, the office shall pay to the trust account managed and maintained by the Division of Higher Education any amount in the bond account established under subdivision (a)(3) of this section that exceeds five hundred thousand dollars (\$500,000), and the funds shall be considered net proceeds from a lottery.

(b)(1) A reserve account may be established as a general operating expense to cover amounts deemed uncollectible.

(2) The office shall establish procedures for minimizing any losses that may be deemed uncollectible and shall exercise and exhaust all available options in those procedures before writing off amounts to the reserve account that may be established under subdivision (b)(1) of this section.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2015, No. 218, § 25; 2015, No. 1076, § 1; 2019, No. 683, § 1; 2019, No. 910, § 2356.

A.C.R.C. Notes. Acts 2019, No. 683, § 2, provided: "Transfer of funds — Rules. On the effective date of this act [July 1, 2019], the balance of funds remaining in the fidelity fund of the Office of the Arkansas Lottery shall be transferred to the office's bond account established under § 23-115-603".

Amendments. The 2015 amendment by No. 218 substituted "Office of the Arkansas Lottery" for "Arkansas Lottery Commission" and "office" for "commission" throughout the section.

The 2015 amendment by No. 1076 deleted "using an insurance company acceptable to the commission" at the end of (c)(1).

The 2019 amendment by No. 683 substituted "Bond account for deposit of bond fees" for "Fidelity fund — Retailer fee" in the section heading; rewrote (a)(1); inserted (a)(2) and (a)(3); redesignated former (a)(2) and (a)(3) as (a)(4) and (a)(5); in the introductory language of (a)(4), substituted "bond account" for "fidelity fund"; in (a)(5), substituted "bond account established under subdivision (a)(3) of this section" for "fidelity fund"; in (b)(2), substituted "the reserve account that may be established under subdivision (b)(1) of this section" for "this account"; and deleted (c) and (d).

The 2019 amendment by No. 910 substituted "Division of Higher Education" for "Department of Higher Education" in (a)(5).

23-115-604. Cancellation, suspension, revocation, or termination of retailer license.

(a) A retailer license executed by the Office of the Arkansas Lottery under this chapter shall specify the reasons for which the retailer license may be canceled, suspended, revoked, or terminated by the office. The reasons shall include without limitation:

- (1) Commission of a violation of this chapter or a rule of the office;
- (2) Failure to accurately or timely account for tickets, lottery games, revenues, or prizes as required by the office;
- (3) Commission of any fraud, deceit, or misrepresentation;
- (4) Insufficient sales;
- (5) Conduct prejudicial to public confidence in a lottery;
- (6) The retailer's filing for or being placed in bankruptcy or receivership;

(7) Any material change as determined in the sole discretion of the office in any matter considered by the office in granting the license of the retailer; or

(8) Failure to meet any of the objective criteria established by the office under this chapter.

(b)(1) If the Director of the Office of the Arkansas Lottery or his or her designee determines that cancellation, denial, revocation, suspension, or the failure to renew a retailer license is in the best interest of the Arkansas Scholarship Lottery, the public welfare, or the State of Arkansas, the director or his or her designee may:

(A) Subject to notice and a right to a hearing, cancel, suspend, revoke, or terminate a retailer license issued under this chapter; or

(B) Fail to renew a retailer license issued under this chapter.

(2) The retailer license may be temporarily suspended by the director or his or her designee without prior notice pending a hearing.

(3) A retailer license may be suspended, revoked, or terminated by the director or his or her designee for any one (1) or more of the reasons enumerated in subsection (a) of this section.

(4) Hearings under this subsection shall be held in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2015, No. 218, § 25; 2017, No. 334, § 10.

Amendments. The 2015 amendment substituted “Office of the Arkansas Lottery” for “Arkansas Lottery Commission” and “office” for “commission” throughout the section; substituted “granting the license of” for “executing the license with” in (a)(7); rewrote (b)(1); and deleted “commission approval or” preceding “prior notice” in (b)(2).

The 2017 amendment subdivided former (b)(1) into present (b)(1), (b)(1)(A), and (b)(1)(B); substituted “Subject to notice and a right to a hearing, cancel, suspend, revoke, or terminate a retailer license issued under this chapter; or” for “cancel, suspend, revoke, or terminate subject to notice and a right to a hearing or” in (b)(1)(A); and made stylistic changes.

23-115-605. Retailers — Fiduciary duty — Protection against loss.

(a)(1) Proceeds from the sale of tickets or shares shall be held in trust until paid to the Office of the Arkansas Lottery either directly or through the office’s authorized collection representative.

(2) A retailer and officers of a retailer’s business have a fiduciary duty to preserve and account for retail lottery proceeds, and retailers are personally liable for all lottery proceeds.

(3) For the purpose of this section, lottery proceeds include without limitation:

(A) Unsold instant tickets received by a retailer;

(B) Cash proceeds of the sale of lottery products;

(C) Net of allowable sales commissions; and

(D) Credit for lottery prizes paid to winners by retailers.

(4) Sales proceeds and unused instant tickets shall be delivered to the office or its authorized collection representative upon demand.

(b)(1) The office shall require retailers to place all lottery proceeds due the office in accounts in institutions insured by the Federal Deposit Insurance Corporation not later than the close of the next banking day after the date of their collection by the retailer until the date they are paid to the office.

(2) At the time of the deposit, lottery proceeds shall be deemed to be the property of the office.

(3) The office may require a retailer to establish a single separate electronic funds transfer account when available for the purpose of:

(A) Receiving moneys from ticket or share sales;

(B) Making payments to the office; and

(C) Receiving payments for the office.

(4) Unless authorized in writing by the office, each retailer shall establish a separate bank account for lottery proceeds that shall be kept separate and apart from all other funds and assets and shall not be commingled with any other funds or assets.

(c) When an individual who receives proceeds from the sale of tickets or shares in the capacity of a retailer becomes insolvent or dies insolvent, the proceeds due the office from the individual or his or her estate have preference over all debts or demands.

(d) If the office determines that a retailer failed to comply with subsection (b) of this section three (3) times within any consecutive twenty-four-month period, the office may pursue business closure against the retailer under this subchapter.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 43; 2015, No. 218, § 25.

Amendments. The 2015 amendment substituted “office” for “commission” throughout the section; and, in (a)(1), sub-

stituted “Proceeds” for “All proceeds,” “shall be held in trust” for “constitute a trust fund,” and “Office of the Arkansas Lottery” for “Arkansas Lottery Commission.”

23-115-606. Retailer — Rental payments based on percentage of retail sales.

If a retailer’s rental payments for the business premises are contractually computed, in whole or in part, on the basis of a percentage of retail sales and the computation of retail sales is not explicitly defined to include sales of tickets or shares, only the compensation received by the retailer from the Office of the Arkansas Lottery may be considered the amount of the lottery retail sale for purposes of computing the rental payment.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2015, No. 218, § 25.

Amendments. The 2015 amendment

substituted “Office of the Arkansas Lottery” for “Arkansas Lottery Commission.”

23-115-607. Business closure authority — Notice.

(a) In addition to all other remedies provided by law for failure to remit lottery proceeds due the Office of the Arkansas Lottery, the

Director of the Office of the Arkansas Lottery may close the business of a retailer if the retailer fails to comply with § 23-115-605(b) three (3) times within any consecutive twenty-four-month period.

(b)(1) The director shall give notice to the retailer that the third delinquency in complying with § 23-115-605(b) in any consecutive twenty-four-month period may result in the closure of the business.

(2) The notice shall be in writing and delivered to the retailer by:

(A) The United States Postal Service; or

(B) Hand delivery.

(c)(1) If the retailer has a third delinquency in complying with § 23-115-605(b) in any consecutive twenty-four-month period after the issuance of the notice provided in subsection (b) of this section and the director chooses to close the business, the director shall notify the retailer by certified mail or by hand delivery that the business will be closed within five (5) business days from the date of receipt of the notice unless the retailer avoids closure of the business under subsection (d) of this section.

(2) If the fifth day falls on a Saturday, Sunday, or legal holiday, the performance of an act to avoid closure of the business under subsection (d) of this section is timely when performed on the next succeeding business day that is not a Saturday, Sunday, or legal holiday.

(d) A retailer may avoid closure of the business by:

(1) Remitting the delinquent lottery proceeds; or

(2) Entering into a written payment agreement approved by the director to satisfy the lottery proceeds delinquency.

History. Acts 2009, No. 1405, § 44; 2015, No. 218, § 25. tery” for “Arkansas Lottery Commission” twice in (a); and substituted “closure of the business” for “business closure” in (c)(2).

Amendments. The 2015 amendment substituted “Office of the Arkansas Lot-

23-115-608. Administrative hearing.

(a) A retailer may request an administrative hearing concerning the decision of the Director of the Office of the Arkansas Lottery to close the retailer’s business.

(b) Within five (5) business days after the delivery or attempted delivery of the notice required by § 23-115-607(c), the retailer may file a written protest, signed by the retailer or his or her authorized agent, with the director stating the reasons for opposing the closure of the business and requesting an administrative hearing.

(c)(1) A retailer may request that an administrative hearing be held:

(A) In person;

(B) By telephone;

(C) Upon written documents furnished by the retailer; or

(D) Upon written documents and any evidence to be produced by the retailer at an administrative hearing.

(2) The director may determine whether an administrative hearing at which testimony is to be presented will be conducted in person or by telephone.

(3) A retailer who requests an administrative hearing based upon written documents is not entitled to any other administrative hearing before the rendering of the administrative decision.

(d) The administrative hearing shall be conducted by a hearing officer appointed by the director.

(e)(1) The hearing officer shall:

(A) Set the time and place for a hearing; and

(B) Give the retailer notice of the hearing.

(2) At the administrative hearing, the retailer may:

(A) Be represented by an authorized representative; and

(B) Present evidence in support of his or her position.

(f) The administrative hearing shall be held within fourteen (14) calendar days of receipt by the director of the request for hearing.

(g) The administrative hearing and determinations made by the hearing officer under this subchapter are subject to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(h) The defense or defenses to the closure of a business under this subchapter are:

(1) Written proof that the retailer remitted the delinquent lottery proceeds due; or

(2) That the retailer has entered into a written payment agreement, approved by the director, to satisfy the lottery proceeds delinquency.

(i) The decision of the hearing officer shall be in writing with copies delivered to the retailer and the director by the United States Postal Service or by hand delivery.

History. Acts 2009, No. 1405, § 44; substituted "Office of the Arkansas Lottery" for "Arkansas Lottery Commission" 2015, No. 218, § 25.

Amendments. The 2015 amendment in (a).

23-115-609. Judicial relief.

(a)(1) If the decision of the hearing officer under § 23-115-608 is to affirm the closure of the business, the decision shall be submitted in writing and delivered by the United States Postal Service or by hand to the retailer.

(2) The retailer may seek judicial relief from the decision by filing suit within twenty (20) calendar days of the date of the decision.

(b)(1) Jurisdiction for a suit under this section to contest a determination of the Director of the Office of the Arkansas Lottery shall be in Pulaski County Circuit Court, where the matter shall be tried de novo.

(2)(A) If the circuit court finds that the business closure order was appropriately issued by the director, the circuit court shall issue an injunction against the retailer prohibiting the further operation of the business.

(B) If a business subject to an injunction issued by the circuit court as provided in this subchapter continues in operation, upon conviction, any person responsible for the decision to operate the business

after the issuance of the injunction shall be guilty of a Class A misdemeanor.

(3) An appeal may be made from the circuit court to the appropriate appellate court, as provided by law.

(c) The procedures established by § 23-115-608 and this section are the sole methods for seeking relief from a written decision to close the business of a retailer for failure to comply with § 23-115-605(b).

(d) The decision to close the business of a retailer shall be final:

(1) If the retailer fails to:

(A) Request an administrative hearing under § 23-115-608; or

(B) Seek judicial relief under this section; or

(2) Upon the final decision of the circuit court or an appellate court.

(e)(1) It is unlawful for a business to continue in operation after a business closure order is issued that is:

(A) Upheld on appeal under this subchapter; or

(B) Not appealed by the retailer under this subchapter.

(2) Upon conviction, any person responsible for the decision to operate the business in violation of this subchapter shall be guilty of a Class A misdemeanor.

History. Acts 2009, No. 1405, § 44; substituted "Office of the Arkansas Lottery" for "Arkansas Lottery Commission" 2015, No. 218, § 25.

Amendments. The 2015 amendment in (b)(1).

23-115-610. Business closure procedure.

(a) If a retailer fails to timely seek administrative or judicial review of a business closure decision or if the business closure decision is affirmed after administrative or judicial review, the Director of the Office of the Arkansas Lottery shall direct the Department of Finance and Administration to affix a written notice to all entrances of the business that:

(1) Identifies the business as being subject to a business closure order; and

(2) States that the business is prohibited from further operation.

(b) The director may also direct that the business be locked or otherwise secured so that it may not be operated.

(c) The Secretary of the Department of Finance and Administration may request the assistance of the Division of Arkansas State Police or any state or local law enforcement official to post the notice or to secure the business as authorized in this section.

(d) The Office of the Arkansas Lottery may reimburse the department for the costs of administering this section after review of the amount by the Legislative Council.

History. Acts 2009, No. 1405, § 44; 2015, No. 218, § 25; 2015, No. 1258, § 34; 2019, No. 910, § 3545.

A.C.R.C. Notes. Acts 2015, No. 1258, § 1, provided: "LEGISLATIVE FIND-

INGS. The General Assembly finds:

"(1) Amendment 92 to the Arkansas Constitution states in part: 'The General Assembly may provide by law for the review by a legislative committee of ad-

ministrative rules promulgated by a state agency before the administrative rules become effective; and that administrative rules promulgated by a state agency shall not become effective until reviewed and approved by the legislative committee charged by law with the review of administrative rules under subdivision (a)(1) of this section’;

“(2) As Amendment 92 does not define the term ‘state agency’, the General Assembly may establish a definition by law as part of its implementation of Amendment 92;

“(3) The General Assembly at this time wishes to exclude the Arkansas State Game and Fish Commission, the State Highway Commission, the Arkansas State Highway and Transportation Department, and institutions of higher education from the definition of ‘state agency’ applied to the implementation of Amendment 92; and

“(4) The General Assembly or the Legislative Council reserve the right to amend the definition of ‘state agency’ in the future to include one (1) or all of the Arkansas State Game and Fish Commis-

sion, the State Highway Commission, the Arkansas State Highway and Transportation Department, and institutions of higher education.”

Publisher’s Notes. Acts 2015, No. 1258, § 34, specifically amended this section as amended by Acts 2015, No. 218.

Amendments. The 2015 amendment by No. 218 substituted “Office of the Arkansas Lottery” for “Arkansas Lottery Commission” in (a) and (b); and, in (d), substituted “Office of the Arkansas Lottery” for “commission” and substituted “Arkansas Lottery Legislative Oversight Committee” for “Arkansas Lottery Commission Legislative Oversight Committee.”

The 2015 amendment by No. 1258 substituted “Legislative Council” for “Arkansas Lottery Legislative Oversight Committee” in (d).

The 2019 amendment, in (c), substituted “Secretary of the Department of Finance and Administration” for “Director of the Department of Finance and Administration” and “Division of Arkansas State Police” for “Department of Arkansas State Police”.

23-115-611. Revocation and suspension of business license.

(a) The closure of a business under this subchapter shall be grounds for cancellation, suspension, revocation, or termination of a retailer license under § 23-115-604.

(b) The closure of a business under this subchapter shall be grounds for the suspension or revocation of any business license granted under the laws of the State of Arkansas, excluding professional licenses.

(c) After the decision to close the retailer’s business becomes final, the Director of the Office of the Arkansas Lottery shall contact the appropriate administrative body responsible for granting licenses to operate the business and report the closure of the business.

History. Acts 2009, No. 1405, § 44; substituted “Office of the Arkansas Lottery” for “Arkansas Lottery Commission” in (c).
2015, No. 218, § 25.

Amendments. The 2015 amendment

23-115-612. Authority to promulgate rules.

The Office of the Arkansas Lottery may promulgate rules necessary for the implementation and enforcement of this subchapter.

History. Acts 2009, No. 1405, § 44; substituted “Office of the Arkansas Lottery” for “Arkansas Lottery Commission.”
2015, No. 218, § 25.

Amendments. The 2015 amendment

SUBCHAPTER 7 — PROCUREMENTS

SECTION.

23-115-701. Procurements — Major pro-

curement contracts —
Competitive bidding.

Effective Dates. Acts 2015, No. 218, § 34: Feb. 26, 2015. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the stability of the Arkansas Scholarship Lottery is critical to the success of the Arkansas Academic Challenge Scholarship Program; that changes to the operational structure of the lottery are needed to improve the creditability and function of the lottery; and that this act is immediately necessary to ensure that the transition of lottery administration is as

undisruptive as possible. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-115-701. Procurements — Major procurement contracts — Competitive bidding.

(a)(1) The Office of the Arkansas Lottery may purchase, lease, or lease-purchase goods or services as necessary for effectuating the purposes of this chapter.

(2) The office may make procurements that integrate functions, including without limitation:

- (A) Lottery design;
- (B) Ticket distribution to retailers;
- (C) Supply of goods and services; and
- (D) Advertising.

(3) In all procurement decisions, the office shall:

(A) Take into account the particularly sensitive nature of lotteries; and

(B) Act to promote and ensure:

(i) Security, honesty, fairness, and integrity in the operation and administration of lotteries; and

(ii) The objectives of raising net proceeds for the benefit of scholarships and grants.

(b) Except as provided in subsections (c) and (d) of this section, the office shall comply with the Arkansas Procurement Law, § 19-11-201 et seq.

(c)(1) The office shall adopt rules concerning the procurement process for major procurement contracts.

(2) The office shall arrange for the solicitation and receipt of competitive bids for major procurement contracts.

(3) Except for printing, stationery, and supplies under Arkansas Constitution, Amendment 54, the office is not required to accept the

lowest responsible bid for major procurement contracts but shall select a bid that provides the greatest long-term benefit to the state, the greatest integrity for the office, and the best service and products for the public.

(d) In any bidding process, the office may administer its own bidding and procurement or may utilize the services of the Department of Finance and Administration.

(e)(1) Each proposed major procurement contract and each amendment or modification to a proposed or executed major procurement contract shall be filed with the Legislative Council for review at least thirty (30) days before the execution date of the major procurement contract or the amendment or modification to a proposed or executed major procurement contract.

(2) The Legislative Council shall provide the office with its review as to the propriety of the major procurement contract and each amendment or modification to a proposed or executed major procurement contract within thirty (30) days after receipt of the proposed major procurement contract or the amendment or modification to a proposed or executed major procurement contract.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 45; 2010, No. 265, § 31; 2010, No. 294, § 31; 2015, No. 218, § 25; 2015, No. 1258, § 35.

A.C.R.C. Notes. Acts 2015, No. 1258, § 1, provided: "LEGISLATIVE FINDINGS. The General Assembly finds:

"(1) Amendment 92 to the Arkansas Constitution states in part: 'The General Assembly may provide by law for the review by a legislative committee of administrative rules promulgated by a state agency before the administrative rules become effective; and that administrative rules promulgated by a state agency shall not become effective until reviewed and approved by the legislative committee charged by law with the review of administrative rules under subdivision (a)(1) of this section';

"(2) As Amendment 92 does not define the term 'state agency', the General Assembly may establish a definition by law as part of its implementation of Amendment 92;

"(3) The General Assembly at this time wishes to exclude the Arkansas State Game and Fish Commission, the State Highway Commission, the Arkansas State

Highway and Transportation Department, and institutions of higher education from the definition of 'state agency' applied to the implementation of Amendment 92; and

"(4) The General Assembly or the Legislative Council reserve the right to amend the definition of 'state agency' in the future to include one (1) or all of the Arkansas State Game and Fish Commission, the State Highway Commission, the Arkansas State Highway and Transportation Department, and institutions of higher education."

Publisher's Notes. Acts 2015, No. 1258, § 35, specifically amended this section as amended by Acts 2015, No. 218.

Amendments. The 2015 amendment by No. 218 substituted "Office of the Arkansas Lottery" for "Arkansas Lottery Commission" and "office" for "commission" throughout the section; and substituted "Arkansas Lottery Legislative Oversight Committee" for "Arkansas Lottery Commission Legislative Oversight Committee" in (e)(1) and (2).

The 2015 amendment by No. 1258 substituted "Legislative Council" for "Arkansas Lottery Legislative Oversight Committee" in (e)(1) and (2).

SUBCHAPTER 8 — LOTTERY PROCEEDS

SECTION.

- 23-115-801. Lottery proceeds.
- 23-115-802. Scholarship Shortfall Reserve Trust Account.

SECTION.

- 23-115-803. Disposition of funds — Definition.

Effective Dates. Acts 2015, No. 218, § 34: Feb. 26, 2015. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the stability of the Arkansas Scholarship Lottery is critical to the success of the Arkansas Academic Challenge Scholarship Program; that changes to the operational structure of the lottery are needed to improve the creditability and function of the lottery; and that this act is immediately necessary to ensure that the transition of lottery administration is as undisruptive as possible. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2015, No. 1105, § 8: Apr. 6, 2015. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Scholarship Lottery is undergoing dramatic change; that the financial stability of the Arkansas Scholarship Lottery is in question; and that this act is immediately necessary to ensure that there are appropriate mechanisms in place to fund scholarship recipients should there be a shortfall in lottery proceeds. Therefore, an emergency is declared to exist, and Sections 6 and 7 of this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor

and the veto is overridden, the date the last house overrides the veto.”

Acts 2017, No. 613, § 7: Mar. 23, 2017. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this state is in need of a more educated and skilled workforce; that the Arkansas Workforce Challenge Scholarships available under this act will allow more Arkansans to pursue higher education in order to obtain a skill or better education that will lead to employment in a high-needs occupation in Arkansas; and that this act is immediately necessary to allow the funding to be in place so that Arkansas Workforce Challenge Scholarships can be awarded to Arkansans as soon as possible. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the

fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

23-115-801. Lottery proceeds.

(a)(1) Lottery proceeds are the property of the Office of the Arkansas Lottery.

(2)(A) The office shall pay its operating expenses from its lottery proceeds.

(B)(i) An amount of lottery proceeds determined by the office to maximize net proceeds for scholarships shall be made available as prize money.

(ii)(a) Subdivision (a)(2)(B)(i) of this section does not create any lien, entitlement, cause of action, or other private right.

(b) In setting the terms of a lottery, the office shall determine any rights of holders of tickets or shares.

(3) The percentage of lottery proceeds determined by the office to be net proceeds shall equal an amount determined by the office to maximize net proceeds for scholarships.

(b)(1)(A) On or before the fifteenth day of each month, the office shall deposit the net proceeds from the lottery into one (1) or more trust accounts at one (1) or more financial institutions.

(B)(i) The office shall establish trust accounts for both the Arkansas Workforce Challenge Scholarship Program, § 6-85-301 et seq., and the Arkansas Concurrent Challenge Scholarship Program, § 6-85-401 et seq., in a financial institution into which the office shall transfer:

(a) Excess funding returned to the office under § 6-85-212(e)(2)(B)(i) from the previous academic year; and

(b) Net proceeds remaining from the previous academic year after the office:

(1) Transfers under subdivision (c)(2) of this section the funds requested by the Division of Higher Education; and

(2) Deposits the amount necessary into the Scholarship Shortfall Reserve Trust Account under § 23-115-802 to maintain an amount equal to twenty million dollars (\$20,000,000).

(ii) The funds transferred by the office into trust accounts for the Arkansas Workforce Challenge Scholarship Program, § 6-85-301 et seq., and the Arkansas Concurrent Challenge Scholarship Program, § 6-85-401 et seq., established under subdivision (b)(1)(B)(i) of this section shall be used for:

(a) Arkansas Workforce Challenge Scholarships;

(b) Any management fees charged by the financial institution to manage the trust accounts for scholarship award supplements; and

(c) Arkansas Concurrent Challenge Scholarships.

(iii) Annually, the office shall transfer to the Division of Higher Education the funds from the previous academic year, if any, that

were transferred by the office into the trust accounts for the Arkansas Workforce Challenge Scholarship Program, § 6-85-301 et seq., and the Arkansas Concurrent Challenge Scholarship Program, § 6-85-401 et seq., under subdivision (b)(1)(B)(i) of this section for distribution of Arkansas Workforce Challenge Scholarships and Arkansas Concurrent Challenge Scholarships.

(2) The office shall follow the investment policy guidelines of the State Board of Finance in selecting a financial institution and managing the net proceeds from the lottery deposited into the trust accounts.

(c)(1) The Director of the Division of Higher Education shall certify to the office the amount of net proceeds from the lottery needed to fund the scholarships awarded to recipients under § 6-85-201 et seq. for each semester of an academic year.

(2)(A) The office shall transfer the funds requested by the director under subdivision (c)(1) of this section into one (1) or more trust accounts at one (1) or more financial institutions meeting the requirements of subdivision (b)(2) of this section maintained by the Division of Higher Education.

(B) The director shall disburse trust account funds only in the name of the recipient:

(i) To an approved institution of higher education; or

(ii) If a recipient transfers to another approved institution of higher education, to the approved institution of higher education where the recipient transferred.

(3) By August 1 of each year, the director shall provide to the Secretary of the Department of Finance and Administration and to the Legislative Council for the academic year just ended an accounting of all trust accounts maintained by the division, including without limitation:

(A) Total deposits to all trust accounts;

(B) Total disbursements from the trust accounts; and

(C) The balance remaining in the trust accounts.

(d)(1) The General Assembly finds that:

(A) The administration of scholarships with proceeds from the lottery are expenses of the office; and

(B) Because the division has the expertise and experienced staff needed to efficiently and appropriately administer the scholarships, the office shall use the services of the division to administer scholarships funded with net proceeds from the lottery.

(2)(A) Annually by April 1, the division shall provide to the office and to the Legislative Council the division's budget for the administrative expenditures allowed under this subsection.

(B) Annually by October 31, the division shall provide an invoice to the office for reimbursement of the administrative expenditures allowed under this subsection, including without limitation:

(i) For each employee the:

(a) Type of position, whether full-time, part-time, permanent, or temporary; and

(b) Salary paid;

(ii) A description of other expenditures requested in the invoice; and

(iii) An explanation of the increase, if any, of actual expenditures over the budgeted expenditures.

(C) Only direct expenditures of the division to administer scholarship funding with net proceeds from the lottery may be invoiced to the office under subdivision (d)(2)(B) of this section.

(3)(A) Annually by November 1, the office shall file a copy of the invoice with the Legislative Council for its review.

(B) The Legislative Council shall review the invoice and forward its comments, if any, to the office.

(C) The office shall reimburse the division for the costs of administering the scholarship awards funded with net proceeds from the lottery after the Legislative Council's review under this subsection.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2010, No. 265, § 32; 2010, No. 294, § 32; 2013, No. 1173, § 17; 2015, No. 218, § 25; 2015, No. 1258, § 36; 2015, No. 1262, § 2; 2017, No. 613, § 5; 2019, No. 456, § 2; 2019, No. 910, §§ 3546-3548.

A.C.R.C. Notes. Acts 2015, No. 1258, § 1, provided: "LEGISLATIVE FINDINGS. The General Assembly finds:

"(1) Amendment 92 to the Arkansas Constitution states in part: 'The General Assembly may provide by law for the review by a legislative committee of administrative rules promulgated by a state agency before the administrative rules become effective; and that administrative rules promulgated by a state agency shall not become effective until reviewed and approved by the legislative committee charged by law with the review of administrative rules under subdivision (a)(1) of this section';

"(2) As Amendment 92 does not define the term 'state agency', the General Assembly may establish a definition by law as part of its implementation of Amendment 92;

"(3) The General Assembly at this time wishes to exclude the Arkansas State Game and Fish Commission, the State Highway Commission, the Arkansas State Highway and Transportation Department, and institutions of higher education from the definition of 'state agency' applied to the implementation of Amendment 92; and

"(4) The General Assembly or the Legislative Council reserve the right to

amend the definition of 'state agency' in the future to include one (1) or all of the Arkansas State Game and Fish Commission, the State Highway Commission, the Arkansas State Highway and Transportation Department, and institutions of higher education."

Publisher's Notes. Acts 2015, No. 1258, § 36, specifically amended this section as amended by Acts 2015, No. 218.

Amendments. The 2015 amendment by No. 218 substituted "Office of the Arkansas Lottery" for "Arkansas Lottery Commission" and "office" for "commission" throughout the section; inserted "for scholarships" in (a)(2)(B)(i) and (a)(3); redesignated the subdivisions in (c)(2); substituted "Director of the Department of Higher Education" for "director" throughout (c)(2) and (3); substituted "Director of the Department of Finance and Administration" for "commission" in (c)(3); substituted "Department of Higher Education" for "department" in (c)(3) and throughout (d); and substituted "Arkansas Lottery Legislative Oversight Committee" for "Arkansas Lottery Commission Legislative Oversight Committee" in (c)(3) and throughout (d).

The 2015 amendment by No. 1258 substituted "Legislative Council" for "Arkansas Lottery Legislative Oversight Committee" in (c)(3), (d)(2)(A), and (d)(3)(A) through (d)(3)(C).

The 2015 amendment by No. 1262 inserted (d)(2)(C).

The 2017 amendment redesignated former (b)(1) as (b)(1)(A); added (b)(1)(B);

and substituted “the trust accounts” for “a trust account” in (b)(2).

The 2019 amendment by No. 456 substituted “trust accounts for both” for “a trust account for” in the introductory language of (b)(1)(B)(i); inserted “and the Arkansas Concurrent Challenge Scholarship Program, § 6-85-401 et seq.” in (b)(1)(B)(i) through (b)(1)(B)(iii); and substituted “trust accounts” for “the trust account” in the introductory language of (b)(1)(B)(ii); and added (b)(1)(B)(ii)(c).

The 2019 amendment by No. 910 substituted “Division of Higher Education” for “Department of Education” throughout (b), (c) and (d); substituted “Secretary of the Department of Finance and Administration” for “Director of the Department of Finance and Administration” in the introductory language of (b)(3); and substituted “division” for “department” in (d)(2)(C).

23-115-802. Scholarship Shortfall Reserve Trust Account.

(a) The Office of the Arkansas Lottery shall maintain a Scholarship Shortfall Reserve Trust Account.

(b)(1) An amount equal to four percent (4%) of the total amount of net proceeds disbursed during the preceding fiscal year in the form of scholarships and grants for higher education shall be deposited from lottery proceeds each year until the amount in the account equals twenty million dollars (\$20,000,000).

(2)(A) Thereafter, only the amount necessary to maintain the account in an amount equal to twenty million dollars (\$20,000,000) shall be deposited into the account after the repayment of any loan made from the Executive Discretionary Division Section 3(d) of the General Improvement Distribution Act of 2015, identical Acts 2015, Nos. 1146 and 1147, before June 30, 2016, to the Division of Higher Education for the Arkansas Academic Challenge Scholarship Program — Part 2 has been satisfied.

(B) A loan made from the Executive Discretionary Division Section 3(d) of the General Improvement Distribution Act of 2015, identical Acts 2015, Nos. 1146 and 1147, to the division for the Arkansas Academic Challenge Scholarship Program — Part 2 shall not exceed one million five hundred thousand dollars (\$1,500,000).

(3) Any amount in the account exceeding twenty million dollars (\$20,000,000) shall be considered net proceeds and shall be deposited annually into one (1) or more trust accounts at one (1) or more financial institutions by July 1 of each year.

(c)(1) Except as provided in subdivision (c)(2) of this section, if net proceeds in any year are not sufficient to meet the amount allocated for higher education scholarships, the account may be drawn upon to meet the deficiency.

(2) The account shall not be drawn upon to fund Arkansas Workforce Challenge Scholarships under the Arkansas Workforce Challenge Scholarship Program, § 6-85-301 et seq., or Arkansas Concurrent Challenge Scholarships under the Arkansas Concurrent Challenge Scholarship Program, § 6-85-401 et seq.

History. Acts 2009, No. 605, § 1; 2009, No. 265, §§ 33, 34; 2010, No. 294, §§ 33, 34; 2015, No. 218, § 25; 2015, No. 1105, No. 606, § 1; 2009, No. 1405, § 46; 2010,

§ 7; 2017, No. 613, § 6; 2019, No. 456, § 3.

Amendments. The 2015 amendment by No. 218 substituted “Office of the Arkansas Lottery” for “Arkansas Lottery Commission” in (a); and deleted “trust” preceding “account” in (b)(3).

The 2015 amendment by No. 1105 redesignated and rewrote (b)(2) as (b)(2)(A); and added (b)(2)(B).

The 2017 amendment redesignated former (c) as (c)(1); added “Except as provided in subdivision (c)(2) of this section” to (c)(1); added (c)(2); and made a stylistic change.

The 2019 amendment added “or Arkansas Concurrent Challenge Scholarships under the Arkansas Concurrent Challenge Scholarship Program, § 6-85-401 et seq.” in (c)(2).

23-115-803. Disposition of funds — Definition.

(a)(1) To effectuate the purposes of the Office of the Arkansas Lottery, the office may borrow moneys from the State of Arkansas or accept and expend moneys from the State of Arkansas and shall repay any sums borrowed from the state as soon as practicable.

(2) As used in this section, “purposes” includes without limitation the payment of the initial expenses of initiation, administration, and operation of the office and lotteries.

(3) The office shall not issue bonds for any purpose.

(b)(1) The office shall be self-sustaining and self-funded.

(2)(A) Except as provided in subsection (a) of this section, moneys in the General Revenue Fund Account of the State Apportionment Fund shall not be used or obligated to pay the expenses of the office or prizes of a lottery.

(B) A claim for the payment of an expense of a lottery or prizes of a lottery shall not be made against any moneys other than moneys credited to the office’s operating account.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; Acts 2015, No. 218, § 25.

A.C.R.C. Notes. The 2015 amendment did not correctly indicate through markup the changes being made in (a)(1).

Amendments. The 2015 amendment

substituted “purposes of the Office of the Arkansas Lottery” for “Arkansas Lottery Commission’s purposes” in (a)(1); and substituted “office” for “commission” throughout the section.

SUBCHAPTER 9 — PENALTIES

SECTION.

23-115-901. Sale of ticket or share to person under 18 years of age prohibited — Penalty.

23-115-902. Fraud — Penalty.

SECTION.

23-115-903. False statement on license application — Penalty.

23-115-904. Inconsistent statutes inapplicable.

Effective Dates. Acts 2015, No. 218, § 34: Feb. 26, 2015. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the stability of the Arkansas Scholarship Lottery is critical to the success of the Arkansas Academic Challenge

Scholarship Program; that changes to the operational structure of the lottery are needed to improve the creditability and function of the lottery; and that this act is immediately necessary to ensure that the transition of lottery administration is as undistruptive as possible. Therefore, an

emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor

vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-115-901. Sale of ticket or share to person under 18 years of age prohibited — Penalty.

(a) A retailer who knowingly sells a ticket or share to a person under eighteen (18) years of age or permits a person under eighteen (18) years of age to play a lottery is guilty of a violation and subject to the following penalties:

(1) A fine not to exceed two hundred fifty dollars (\$250) for a first violation;

(2) For a second violation within a forty-eight-month period:

(A) A fine not to exceed five hundred dollars (\$500); and

(B) Suspension of the retailer license issued under § 23-115-601 et seq. for a period not to exceed two (2) days;

(3) For a third violation within a forty-eight-month period:

(A) A fine not to exceed one thousand dollars (\$1,000); and

(B) Suspension of the retailer license issued under § 23-115-601 et seq. for a period not to exceed seven (7) days;

(4) For a fourth or subsequent violation within a forty-eight-month period:

(A) A fine not to exceed two thousand dollars (\$2,000); and

(B) Suspension of the retailer license issued under § 23-115-601 et seq. for a period not to exceed fourteen (14) days; and

(5) For a fifth or subsequent violation within a forty-eight-month period, the retailer license issued under § 23-115-601 et seq. may be revoked.

(b) An employee of a retailer who violates this section is subject to a fine not to exceed one hundred dollars (\$100) per violation.

(c) It is an affirmative defense to a prosecution under this section that the retailer reasonably and in good faith relied upon representation of proof of age in making the sale.

(d) A person convicted of violating any provision of this section whose retailer license is suspended or revoked upon conviction shall surrender to the court his or her retailer license, and the court shall transmit the retailer license to the Office of the Arkansas Lottery and instruct the office:

(1) To suspend or revoke the person's retailer license or to not renew the license; and

(2) Not to issue any new retailer license to that person for the period of time determined by the court in accordance with this section.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2015, No. 218, § 25; 2017, No. 334, § 11.

Amendments. The 2015 amendment, in (d), substituted “Office of the Arkansas

Lottery” for “Arkansas Lottery Commission” and “office” for “commission.”

The 2017 amendment deleted “within a forty-eight-month period” following “violation” from the end of (a)(1).

23-115-902. Fraud — Penalty.

The offense of lottery fraud and penalties for a conviction of lottery fraud are provided under § 5-55-501.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2011, No. 207, § 29; 2015, No. 218, § 25.

Amendments. The 2015 amendment made no changes to this section.

RESEARCH REFERENCES

ALR. Criminal Actions for Fraudulently Passing or Redeeming Lottery Tick-

ets or Tampering with Lottery Equipment, 32 A.L.R.7th Art. 7 (2018).

23-115-903. False statement on license application — Penalty.

(a) A person shall not knowingly make:

(1) A material false statement in an application for a license or proposal to conduct a lottery; or

(2) A material false entry in any book or record that is compiled, maintained, or submitted to or for the benefit of the Office of the Arkansas Lottery.

(b)(1) A person who violates this section is guilty of a Class D felony.

(2) A person convicted for violating subsection (a) of this section is subject to an additional fine of not more than twenty-five thousand dollars (\$25,000) or the dollar amount of the material false entry or material false statement, whichever is greater.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2015, No. 218, § 25.

Amendments. The 2015 amendment, in (a)(2), inserted “or for the benefit of”

and substituted “Office of the Arkansas Lottery” for “Arkansas Lottery Commission.”

23-115-904. Inconsistent statutes inapplicable.

(a) Section 5-66-101 et seq. and all other laws and parts of laws inconsistent with this chapter are expressly declared not to apply to any person engaged in, conducting, or otherwise participating in lotteries.

(b) A person is not guilty of any criminal offense set forth in § 5-66-101 et seq. or any other law relating to illegal gambling to the extent the person relied on any rule, order, finding, or other determination by the Arkansas Lottery Commission [abolished] or the Office of the Arkansas Lottery that the activity was authorized by this chapter during the time that the rule, order, finding, or other determination was in effect.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2015, No. 218, § 25.

Amendments. The 2015 amendment, in (b), inserted “or the Office of the Arkan-

sas Lottery” and “during the time that the rule, order, finding, or other determination was in effect” at the end.

SUBCHAPTER 10 — DEBTORS OWING MONEY TO THE STATE

SECTION.

23-115-1001. Legislative intent.

23-115-1002. Definitions.

23-115-1003. Collection remedy not exclusive.

23-115-1004. List of debtors — Withholding winnings — Ranking of liens.

SECTION.

23-115-1005. Confidential information.

23-115-1006. Applicability.

Effective Dates. Acts 2015, No. 218, § 34: Feb. 26, 2015. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the stability of the Arkansas Scholarship Lottery is critical to the success of the Arkansas Academic Challenge Scholarship Program; that changes to the operational structure of the lottery are needed to improve the creditability and function of the lottery; and that this act is immediately necessary to ensure that the transition of lottery administration is as

undisruptive as possible. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

23-115-1001. Legislative intent.

(a) The purposes of this subchapter are to establish:

(1) A policy and to provide a system whereby all claimant agencies of this state in conjunction with the Office of the Arkansas Lottery shall cooperate in identifying debtors who owe money to the state through its various claimant agencies or to persons on whose behalf the state and its claimant agencies act and who qualify for lottery prizes under this chapter from the office; and

(2) Procedures for setting off against any prize the sum of any debt owed to the state or to persons on whose behalf the state and its claimant agencies act.

(b) This subchapter shall be liberally construed to effectuate the purposes stated in subsection (a) of this section.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2015, No. 218, § 25.

Amendments. The 2015 amendment,

in (a)(1), substituted “Office of the Arkansas Lottery” for “Arkansas Lottery Commission” and “office” for “commission.”

23-115-1002. Definitions.

As used in this subchapter:

(1) "Claimant agency" means a state agency, department, board, bureau, commission, or authority:

(A) To which a person owes a debt; or

(B) That acts on behalf of a person to collect a debt;

(2) "Debt" means a:

(A) Liquidated sum due and owing any claimant agency when the sum has accrued through contract, subrogation, tort, or operation of law regardless of whether there is an outstanding judgment for the sum; or

(B) Sum that is due and owing any person and is enforceable by the state;

(3) "Debtor" means an individual owing money to or having a delinquent account with a claimant agency when the obligation has not been:

(A) Adjudicated as satisfied by court order;

(B) Set aside by court order; or

(C) Discharged in bankruptcy; and

(4) "Prize" means the proceeds of any lottery prize awarded under this chapter.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2015, No. 218, § 25.

Amendments. The 2015 amendment made no changes to this section.

23-115-1003. Collection remedy not exclusive.

The collection remedy authorized by this subchapter is in addition to and not in substitution for any other remedy available by law.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2015, No. 218, § 25.

added "not exclusive" to the end of the section heading.

Amendments. The 2015 amendment

23-115-1004. List of debtors — Withholding winnings — Ranking of liens.

(a)(1) A claimant agency may submit to the Office of the Arkansas Lottery a list of the names of all debtors owing in excess of one hundred dollars (\$100) to the claimant agency or to persons on whose behalf the claimant agency is acting.

(2) The full amount of the debt is collectible from any prize without regard to limitations on the amounts that may be collectible in increments through garnishment or other proceedings.

(3) The list shall constitute a valid lien upon and claim of lien against the prize of any debtor named in the list.

(4) The list shall contain:

(A) The name of each debtor;

(B) The Social Security number of each debtor if available; and

(C) Any other information that would assist the office in identifying each debtor named in the list.

(b)(1) The office shall withhold any prizes subject to the lien created by this section and send notice to the winner by certified mail, return receipt requested, of the action and the reason the prizes were withheld.

(2)(A) However, if the winner appears and claims prizes in person, the office shall notify the winner at that time by hand delivery of the action.

(B) If the debtor does not protest the withholding of the prizes in writing within thirty (30) days of receipt of the notice, the office shall pay the prizes subject to the lien to the claimant agency.

(C) If the debtor protests the withholding of the prizes subject to the lien within thirty (30) days of receipt of the notice, the office shall:

(i) File an action in interpleader in the circuit court of the county where the debtor resides;

(ii) Pay the disputed sum into the registry of the circuit court; and

(iii) Give notice to the claimant agency and debtor of the initiation of the action.

(c) The liens created by this section are ranked by priority as follows:

(1) Taxes due the state;

(2) Delinquent child support; and

(3) All other judgments and liens in order of the date entered or perfected.

(d) The office is not required to deduct claimed debts from prizes paid out by retailers or entities other than the office.

(e) Any list of debt provided under this section shall be provided periodically as the office shall provide by rule, and the office is not obligated to retain the lists or deduct debts appearing on the lists beyond the period determined by the rules.

(f) The office may prescribe forms and promulgate rules it deems necessary to implement this section.

(g) The office and any claimant agency shall incur no civil or criminal liability for good faith adherence to this section.

(h) The claimant agency shall pay the office for all costs incurred by the office in setting off debts in the manner provided in this subchapter.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2015, No. 218, § 25.

Amendments. The 2015 amendment substituted "office" for "commission" throughout the section; substituted "Of-

fice of the Arkansas Lottery" for "Arkansas Lottery Commission" in (a)(1); and inserted "subject to the lien" in (b)(2)(B) and (C).

23-115-1005. Confidential information.

(a)(1) Notwithstanding any other confidentiality statute, the Office of the Arkansas Lottery may provide to a claimant agency all information necessary to accomplish and effectuate the intent of this subchapter.

(2) Information shall be used by a claimant agency only in the pursuit of its debt collection duties and practices.

(b) Confidential information obtained by a claimant agency from the office under this section shall retain its confidentiality.

(c) An employee or prior employee of a claimant agency who unlawfully discloses any information for any other purpose, except as otherwise specifically authorized by law, is guilty of a Class A misdemeanor.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2015, No. 218, § 25.

Amendments. The 2015 amendment substituted “Office of the Arkansas Lot-

tery” for “Arkansas Lottery Commission” in (a)(1); and substituted “office” for “commission” in (b).

23-115-1006. Applicability.

This subchapter only applies to prizes of more than five hundred dollars (\$500).

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2015, No. 218, § 25.

Amendments. The 2015 amendment substituted “Applicability” for “Applica-

tion” in the section heading; and substituted “only applies” for “applies only” in the section text.

SUBCHAPTER 11 — ARKANSAS LOTTERY LEGISLATIVE OVERSIGHT

SECTION.

23-115-1101. Duties of Legislative Council.

SECTION.

23-115-1102. [Repealed.]

Effective Dates. Acts 2015, No. 218, § 34: Feb. 26, 2015. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the stability of the Arkansas Scholarship Lottery is critical to the success of the Arkansas Academic Challenge Scholarship Program; that changes to the operational structure of the lottery are needed to improve the creditability and function of the lottery; and that this act is immediately necessary to ensure that the transition of lottery administration is as undistruptive as possible. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

23-115-1101. Duties of Legislative Council.

(a) The Legislative Council shall:

(1) Review whether expenditures of lottery proceeds have been in accordance with this chapter;

(2) Review and approve proposed rules of the Office of the Arkansas Lottery under § 10-3-309;

(3)(A) Review proposed contracts of twenty-five thousand dollars (\$25,000) or more before the execution of the contracts.

(B) The office shall provide a list of all contracts less than twenty-five thousand dollars (\$25,000) to the Legislative Council on a monthly basis;

(4) Review reports filed with the Legislative Council by the Division of Higher Education, including without limitation reports filed under §§ 6-85-205 and 6-85-220;

(5) Perform its duties under § 6-85-220; and

(6) Study other lottery matters as the Legislative Council considers necessary to fulfill its mandate.

(b)(1) Annually by December 15, the Legislative Council shall provide to the General Assembly:

(A) Any analysis or findings resulting from its activities under this section that the Legislative Council deems relevant; and

(B) Its recommendations for any changes to the:

(i) Scholarship award amounts;

(ii) Number or type of scholarships; and

(iii) Scholarship eligibility requirements.

(2) The Legislative Council may make interim reports to the General Assembly regarding the expenditure of net lottery revenues.

(c)(1) During a regular, fiscal, or extraordinary session of the General Assembly, the Joint Budget Committee shall perform the functions assigned to the Legislative Council under:

(A) This chapter;

(B) Section 6-60-902;

(C) Section 6-60-903;

(D) Section 6-85-205;

(E) Section 6-85-212;

(F) Section 6-85-216;

(G) Section 6-85-219;

(H) Section 6-85-220; and

(I) Section 19-10-212.

(2) This subsection does not limit the authority of the Legislative Council to meet during a recess as authorized by § 10-2-223 or § 10-3-211.

(d) The Legislative Council and the Joint Budget Committee may:

(1) Establish or utilize one (1) or more subcommittees to assist in their duties under this chapter;

(2) Assign information filed with the Legislative Council under this subchapter to one (1) or more subcommittees of the Legislative Council,

including without limitation a subcommittee created under subdivision (d)(1) of this section; and

(3) Delegate their duties under this chapter to one (1) or more subcommittees of the Legislative Council, subject to the final approval of the Legislative Council or the Joint Budget Committee.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, §§ 47, 48; 2010, No. 265, § 35; 2010, No. 294, § 35; 2011, No. 207, § 30; 2015, No. 218, § 25; 2015, No. 1258, § 37; 2019, No. 910, § 2357.

A.C.R.C. Notes. Acts 2015, No. 1258, § 1, provided: “LEGISLATIVE FINDINGS. The General Assembly finds:

“(1) Amendment 92 to the Arkansas Constitution states in part: ‘The General Assembly may provide by law for the review by a legislative committee of administrative rules promulgated by a state agency before the administrative rules become effective; and that administrative rules promulgated by a state agency shall not become effective until reviewed and approved by the legislative committee charged by law with the review of administrative rules under subdivision (a)(1) of this section’;

“(2) As Amendment 92 does not define the term ‘state agency’, the General Assembly may establish a definition by law as part of its implementation of Amendment 92;

“(3) The General Assembly at this time wishes to exclude the Arkansas State Game and Fish Commission, the State Highway Commission, the Arkansas State

Highway and Transportation Department, and institutions of higher education from the definition of ‘state agency’ applied to the implementation of Amendment 92; and

“(4) The General Assembly or the Legislative Council reserve the right to amend the definition of ‘state agency’ in the future to include one (1) or all of the Arkansas State Game and Fish Commission, the State Highway Commission, the Arkansas State Highway and Transportation Department, and institutions of higher education.”

Publisher’s Notes. Acts 2015, No. 1258, § 37, specifically amended this section as amended by Acts 2015, No. 218.

Amendments. The 2015 amendment by No. 218 substituted “Arkansas Lottery Legislative Oversight Committee” for “Arkansas Lottery Commission Legislative Oversight Committee” throughout the section; substituted “Office of the Arkansas Lottery” for “Arkansas Lottery Commission” in (d)(2); substituted “office” for “commission” in (d)(3)(B); and inserted “membership of the” in (f)(3).

The 2015 amendment by No. 1258 rewrote the section.

The 2019 amendment substituted “Division of Higher Education” for “Department of Higher Education” in (a)(4).

23-115-1102. [Repealed.]

Publisher’s Notes. This section, concerning filing of information with Arkansas Lottery Legislative Oversight Committee, was repealed by Acts 2015, No. 1258, § 38. The section was derived from Acts 2009, No. 605, § 1; 2009, No. 606,

§ 1; 2010, No. 265, § 36; 2010, No. 294, § 36; 2015, No. 218, § 25.

The repeal of this section by Acts 2015, No. 1258 by its own terms superseded the amendment by Acts 2015, No. 218, § 25.

CHAPTER 116

PAID FANTASY SPORTS GAMES

SECTION.

23-116-101. Legislative findings.

23-116-102. Definitions.

SECTION.

23-116-103. Paid fantasy sports games authorized.

SECTION.

23-116-104. Tax on paid fantasy sports games.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

23-116-101. Legislative findings.

(a) The General Assembly finds that a paid fantasy sports game conducted in compliance with this chapter does not constitute gambling for any purpose.

(b) Paid fantasy sports games conducted in compliance with this chapter are exempt from § 5-66-101 et seq.

History. Acts 2017, No. 1075, § 2.

23-116-102. Definitions.

As used in this chapter:

(1) “Game operator” means a person who:

(A) Is engaged in the business of professionally conducting paid fantasy sports games for cash prizes for members of the general public; and

(B) Requires cash or a cash equivalent as an entry fee to be paid by a member of the general public who participates in a paid fantasy sports game;

(2) “Game participant” means an individual who participates in a paid fantasy sports game offered by a game operator;

(3) “Gross paid fantasy sports game revenues” means the amount equal to the total of all entry fees that a game operator collects from all game participants, less the total of all sums paid out as prizes to all game participants, multiplied by the location percentage for this state;

(4) “Location percentage” means, for each paid fantasy sports game, the percentage rounded to the nearest tenth of a percent of the total of entry fees collected from game participants located in this state, divided by the total of entry fees collected from all game participants in paid fantasy sports games;

(5) "Paid fantasy sports game" means any fantasy sports game or contest that meets the following conditions:

(A) The values of all prizes and awards offered to winning game participants in public contests are established and made known to the game participants in advance of the game or contest;

(B) All winning outcomes reflect the relative knowledge and skill of the game participants and are determined predominantly by accumulated statistical results of the performance of individual athletes in actual sporting events;

(C) A winning outcome is not based on the score, point spread, or performance or performances of any single team or combination of teams or solely on any single performance of an individual athlete or player in any single event;

(D) The statistical results of the performance of individuals under subdivision (5)(B) of this section are not based on college or high school sports or on horse racing or greyhound racing;

(E) A paid fantasy sports game participant is not permitted to select an athlete through an automatic draft that does not involve any input or control by the paid fantasy sports game participant or to choose preselected teams of athletes;

(F) A winning outcome is determined by accumulated statistical results of fully completed contests or events and not merely a portion of a contest or event, except that a paid fantasy sports game participant may be credited for statistical results accumulated in a suspended or shortened contest or event that has been suspended or shortened on account of weather or other natural or unforeseen event; and

(G)(i) Each paid fantasy sports game participant is required to pay an entry fee to participate.

(ii) Payment under subdivision (5)(G)(i) of this section shall be with cash or a cash equivalent and is not gambling for the purposes of § 5-66-101 et seq.; and

(6) "Person" means any association, corporation, limited liability company, fiduciary, individual, joint stock company, joint venture, partnership, sole proprietorship, or other private legal entity.

History. Acts 2017, No. 1075, § 2.

23-116-103. Paid fantasy sports games authorized.

A game operator is authorized to conduct paid fantasy sports games through one (1) or more websites or platforms maintained and operated by the game operator.

History. Acts 2017, No. 1075, § 2.

23-116-104. Tax on paid fantasy sports games.

(a) A game operator shall pay a tax for the privilege of conducting paid fantasy sports games under this chapter in an amount of eight

percent (8%) of the game operator's gross paid fantasy sports game revenues from the previous state fiscal year.

(b) The special privilege tax levied in subsection (a) of this section shall be:

(1) Reported and remitted to the Department of Finance and Administration on a quarterly basis through the Arkansas Taxpayer Access Point or its successor on forms prescribed by the Secretary of the Department of Finance and Administration; and

(2) Subject to the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(c) The secretary shall promulgate rules to administer the tax levied under this section.

History. Acts 2017, No. 1075, § 2; 2019, No. 910, §§ 3549, 3550.

Amendments. The 2019 amendment substituted "Secretary of the Department

of Finance and Administration" for "Director of the Department of Finance and Administration" in (b)(1); and substituted "secretary" for "director" in (c).

CHAPTER 117

CASINO GAMING

SECTION.

23-117-101. Letter of support for casino applicant.

A.C.R.C. Notes. Acts 2019, No. 371, § 1, provided: "Legislative findings. The General Assembly finds it necessary to fulfill the purpose of The Arkansas Casino Gaming Amendment of 2018, Arkansas Constitution, Amendment 100, by providing clarity regarding the letter of support required for a casino applicant in order for a county or city official to fulfill his or her responsibility to represent the desire of the citizens within the affected city and county".

Effective Dates. Acts 2019, No. 371, § 3: Mar. 8, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that delay in clarifying requirements

for a letter of support required for a casino applicant impedes the ability of a county official or mayor to determine the desire for and necessity of a casino operation in the city or county. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto".

23-117-101. Letter of support for casino applicant.

(a) Pursuant to The Arkansas Casino Gaming Amendment of 2018, Arkansas Constitution, Amendment 100, the Arkansas Racing Commission shall require a casino applicant for a casino license in Pope County and Jefferson County to submit:

- (1) Either a letter of support from the county judge or a resolution from the quorum court in the county where the proposed casino is to be located; and
 - (2) If the proposed casino is to be located within a city or town, a letter of support from the mayor in the city or town where the proposed casino is to be located.
- (b) A letter of support from the county judge or a resolution of support from the quorum court, and from the mayor, if appropriate, required under subsection (a) of this section shall be dated and signed by the county judge, quorum court, or mayor holding office at the time of the submission of an application for a casino license.

History. Acts 2019, No. 371, § 2.

